

Responses of Timothy S. Black
Nominee to the U.S. District Court for the Southern District of Ohio
to the Written Questions of Senator Tom Coburn, M.D.

1. Since at least the 1930s, the Supreme Court has expansively interpreted Congress' power under the Commerce Clause. Recently, however, in the cases of *United States v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000), the Supreme Court has imposed some limits on that power.

- a. Generally speaking, are *Lopez* and *Morrison* consistent with the Supreme Court's earlier Commerce Clause decisions?

Response: Yes.

- b. Why or why not?

Response: In *Gonzales v. Raich*, the Supreme Court indicated that its *Lopez* and *Morrison* decisions are consistent with earlier Supreme Court Commerce Clause decisions.

2. Some people refer to the Constitution as a "living" document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?

Response: No.

3. In *Roper v. Simmons*, 543 U.S. 551 (2005), Justice Kennedy relied in part on the "evolving standards of decency" to hold that capital punishment for any murderer under age 18 was unconstitutional. I understand that the Supreme Court has ruled on this matter, but do you agree with Justice Kennedy's analysis?

Response: I am bound by the Supreme Court's rulings and I would apply Supreme Court law.

- a. How would you determine what the evolving standards of decency are?

Response: I would apply the analysis established by Supreme Court law.

4. At your hearing, I asked you whether, in your view, it is ever proper for judges to rely on contemporary foreign or international laws or decisions in determining the meaning of the Constitution. You answered "no," for which I commend you. However, in a couple of cases including *Roper v. Simmons*, and *Lawrence v. Texas*, 539 U.S. 558 (2003), a majority of the Supreme Court considered and cited foreign law in its majority opinion. Do you believe the majority was incorrect in these cases? Please explain.

Response: I am bound by the Supreme Court's rulings and would apply Supreme Court law. I do not believe it is proper for judges to rely on contemporary foreign or international laws or decisions to determine the meaning of the U.S. Constitution.

- a. Do you believe foreign law has any bearing on a court's interpretation of the Eighth Amendment? What about any other amendments?**

Response: No, I do not believe that foreign law has any bearing on a court's interpretation of the Eighth Amendment or any other amendments.