

Responses of J. Michelle Childs
Nominee to the U.S. District Court for the District of South Carolina
to the Written Questions of Senator Tom Coburn, M.D.

- 1. 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.

- 2. 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. Do you believe *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*, 545 U.S. 1 (2005), the Supreme Court affirmed that the *Lopez* and *Morrison* decisions are consistent with its prior decisions on the Commerce Clause.

- 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: My views on the analysis of decisions of the Supreme Court or other appellate courts would have no impact on my work as a federal district judge. It is not the role of a federal district judge to question binding legal precedent, but instead to follow it.

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

Response: If confirmed, I would apply the analysis set forth in the applicable decisions of the Supreme Court and the federal appellate courts in determining the concept of “evolving standards of decency.”

- b. Do you think that a judge could ever find that the “evolving standards of decency” dictated that the death penalty is unconstitutional in all cases?**

Response: No, unless the Supreme Court overrules its existing precedent.

c. What factors do you believe would be relevant to the judge's analysis?

Response: The factors identified in controlling precedent of the Supreme Court and the appellate decisions within the particular jurisdiction would be relevant to the federal district judge's analysis of this issue.

4. In your view, is it ever proper for judges to rely on contemporary foreign or international laws or decisions in determining the meaning of the Constitution?

Response: No.

a. If so, under what circumstances would you consider foreign law when interpreting the Constitution?

Response: Not applicable.

b. Do you believe foreign nations have ideas and solutions to legal problems that could contribute to the proper interpretation of our laws?

Response: No.

c. Would you consider foreign law when interpreting the Eighth Amendment? Other amendments?

Response: No. If confirmed as a federal district judge, I would apply the law set forth by the Supreme Court and the Fourth Circuit.