

**Responses of Nancy D. Freudenthal
Nominee to the U.S. District Court for the District of Wyoming
to the Written Follow-up Questions of Senator Tom Coburn, M.D.**

- 1. On October 20, 2006, the Wyoming Tribune-Eagle published a recent letter to the editor, which quotes you as saying that you and your husband are “for a woman’s right to choose, but are not pro-abortion.”**

- a. Please explain this statement, specifically how an individual can be for a “woman’s right to choose” but not “pro-abortion.”**

Response: I believe a woman’s right to choose relates to privacy and the woman’s ability to make her own choice. I don’t believe one can automatically conclude her personal choice will be for (pro) an abortion.

- b. If confirmed, how would your belief in a “woman’s right to choose” influence your decisions as a judge?**

Response: If confirmed, my personal beliefs would not influence my decisions as a judge and I would strictly adhere to Supreme Court and Tenth Circuit precedent.

- 2. In your questionnaire submitted to the Committee, you indicated that you have no experience litigating criminal cases. Criminal cases account for a substantial portion of the federal. You also indicated that you have never tried a case to a jury.**

- a. How has your professional experience prepared you for the position to which you have been nominated?**

Response: I have nearly thirty years experience working with statutes and constitutional provisions. I have six years of quasi-judicial experience as chairman of the Wyoming Board of Equalization, adjudicating tax disputes. I have fourteen years handling a primarily litigation-based practice. Criminal law, like tax law and other matters in litigation, is governed by the Constitution and statutes, with court interpretation. I believe this thirty-year professional experience has prepared me for the position to which I have been nominated.

- b. If confirmed, how do you plan to educate yourself with respect to federal criminal law and the federal sentencing guidelines?**

Response: If confirmed, I plan to study the criminal statutes, the case law, the Benchbook, and the numerous criminal publications issued by the Federal Judicial Center. I also plan to take advantage of the educational opportunities offered by the Federal Judicial Center. Finally, I plan to confer with the two active district court judges and the one senior district court judge for the District of Wyoming.

3. **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: The Supreme Court said that *Lopez* and *Morrison* are consistent with earlier Commerce Clause decisions when it observed that both cases "preserved" "the larger context of modern-era Commerce Clause jurisprudence." *Gonzales v. Raich*, 545 U.S. 1 (2005). That jurisprudence historically recognized limits on Congress' power under the Commerce Clause. In *Lopez* and *Morrison*, the Supreme Court concluded that the two statutes in question had no logical connection to interstate commerce or any sort of economic enterprise, and were not related to a larger regulation of economic activity. Also, neither statute contained a jurisdictional element establishing that the federal cause of action is in pursuance of Congress' regulation of interstate commerce. This analytical approach is consistent with earlier Commerce Clause decisions.

4. **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. Society does not interpret the Constitution. The Constitution is interpreted by the courts consistent with Supreme Court precedent. However, I do believe that constitutional principles established by precedent apply to new situations.

5. **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: If confirmed I would apply Supreme Court precedent.

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

Response: If required to determine the evolving standards of decency, I would follow the analysis established by Supreme Court precedent.

6. **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: No. As I read *Lawrence v. Texas*, that decision relied on the U.S. Constitution. While foreign law was discussed, it was not the basis for the decision. In *Roper v. Simmons*, the Supreme Court discussed “international opinion” but expressly held that international opinion was not controlling.

- 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.