

Responses of Richard Gergel
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. The Constitution is based upon a set of fixed, enduring principles.

- 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: The United States Supreme Court, in a long line of precedents, has held that congressional power under the Commerce Clause is broad but not absolute. The reasoning and holding of both *Lopez* and *Morrison* are consistent with that approach, as explained in the more recent decision of *Gonzales v. Raich*, 545 U.S. 1 (2005).

- 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 duty as a United States District Judge would be to respect and apply the holdings and analyses of the United States Supreme Court.

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

Response: I would look to the relevant precedents of the United States Supreme Court and the Fourth Circuit Court of Appeals and faithfully apply the standards adopted by those appellate courts.

- 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. The United States Supreme Court has consistently held that the death penalty is a constitutional form of punishment under the Eighth Amendment.

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

Response: A District Judge in the District of South Carolina should apply the controlling precedents, holdings and standards of the United States Supreme Court and the Fourth Circuit Court of Appeals.

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: I do not believe foreign law should be utilized to determine the meaning of the United States Constitution.