

Responses of Amy B. Jackson
Nominee to be United States District Judge for the District of Columbia
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. I do not believe that the Constitution is constantly evolving as society interprets it.

Justice William Brennan once said: “Our Constitution was not intended to preserve a preexisting society but to make a new one, to put in place new principles that the prior political community had not sufficiently recognized.” Do you agree with him that constitutional interpretation today must take into account this supposed transformative purpose of the Constitution?

Response: I am not familiar with the context in which this statement was made or what Justice Brennan has said about how the Constitution’s purpose could or should inform its interpretation. A District Judge should look to the language of the Constitution and to Supreme Court and appellate court precedent interpreting that language in an effort to apply the principles embodied in the Constitution to the circumstances presented in a particular case.

- 2. Do you believe judicial doctrine rightly incorporates the evolving understandings of the Constitution forged through social movements, legislation, and historical practice?**

Response: I believe that it is the role of the legislature, and not the courts, to determine whether and how evolving social views should be incorporated in law.

- 3. Do you believe empathy is an essential ingredient for arriving at just decisions and outcomes and should play a role in a judge’s consideration of a case?**

Response: No.

- 4. Is any transaction involving the exchange of money subject to Congress’s Commerce Clause power?**

Response: The Supreme Court has held that the scope of the Commerce Clause is broad, but not unlimited. If I am confirmed and I am presented with a case involving the application of the Commerce Clause, I would carefully read the statute that is the subject of the lawsuit and apply the relevant Supreme Court and D.C. Circuit precedents, including *United States v. Lopez*, 514 U.S. 549 (1995), and *Morrison v. United States*, 529 U.S. 598 (2000).

5. What limitations remain on the individual Second Amendment right now that it has been incorporated against the States?

Response: In *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008), the Supreme Court held that the Second Amendment protects an individual right. In *McDonald v. City of Chicago, Illinois*, 130 S. Ct. 3020, (2010), the Court stated that the *Heller* decision “did not cast doubt on such longstanding regulatory measures such as ‘prohibitions on the possession of firearms by felons and the mentally ill,’ ‘laws forbidding the carrying of firearms in sensitive places such as schools or government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.’” The Court did not specify what other limitations remain, if any.

a. Is it limited only to possession of a handgun for self-defense in the home, since both *Heller* and *McDonald* involved cases of handgun possession for self-defense in the home?

Response: If I am confirmed and I am presented with a case involving the interpretation of the Second Amendment, I would carefully read the statute that is the subject of the lawsuit to understand its terms and its scope, and apply Supreme Court and D.C. Circuit precedents, including *Heller*, *McDonald*, and any future cases addressing this issue.

6. 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 as a District Court judge, I would be bound by the holding and the analysis set forth in the majority opinion in *Roper*.

a. Do you agree that the Constitution’s prohibition on cruel and unusual punishment “embodies a principle whose application is appropriately informed by our society’s understanding of cruelty and by what punishments have become unusual?”

Response: In *Roper*, the Supreme Court stated: “we have established the propriety and affirmed the necessity of referring to ‘the evolving standards of decency that mark the progress of a maturing society’ to determine which punishments are so disproportionate as to be cruel and unusual.” 543 U.S. at 560 – 61, quoting *Trop v. Dulles*, 356 U.S. 86, 100-101 (1958)(plurality opinion). If confirmed as a District Judge, I would be bound to follow these and other Supreme Court precedents and any applicable decisions of the U.S. Court of Appeals for the District of Columbia Circuit.

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

Response: If confirmed as a District Judge, I would follow the directives set forth in Supreme Court precedent as to what factors should be considered in making this determination.

c. 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: The Supreme Court determined that the death penalty is constitutional, and it has reiterated that determination in many subsequent opinions. A District Judge would be bound by those precedents.

d. What factors do you believe would be relevant to the judge’s analysis?

Response: Any analysis should be conducted by consideration of the factors set forth in Supreme Court and appellate court precedent.

7. 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: It would only be proper to rely on foreign or international law in those circumstances in which Supreme Court precedent, D.C. Circuit precedent, or a statute requires the District Court to do so.

a. Is it appropriate for judges to look for foreign countries for “wise solutions” and “good ideas” to legal and constitutional problems?

Response: No.

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

Response: If confirmed as a District Judge, I would only consider foreign law in those circumstances in which it is required by Supreme Court precedent, D.C. Circuit precedent, or a statute.

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

Response: I am not aware of any circumstance where that would be the case.

- d. Would you consider foreign law when interpreting the Eighth Amendment?
Other amendments?**

Response: If confirmed as a District Judge, I would follow Supreme Court precedent to ascertain in what circumstances, if any, foreign law should be taken into consideration in interpreting any Constitutional amendment.