

**Responses of Wilma A. Lewis
Nominee to be Judge for the District of the Virgin Islands
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: I do not agree with the proposition that the Constitution is constantly evolving as society interprets it. The Constitution can be altered only through the amendment process.

- 2. 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: No.

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

Response: No. The text of the Constitution governs and district judges are bound by that text, as interpreted by the Supreme Court and the applicable Circuit Court.

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

Response: In *United States v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000), the Supreme Court ruled that Congress had broad, but not unlimited powers under the Commerce Clause. If confirmed as a judge for the District of the Virgin Islands, I would apply those precedents as well as any other applicable precedents from the Supreme Court and the Court of Appeals for the Third Circuit in addressing the reach of Congress’ power under the Commerce Clause.

- 5. The U.S. Supreme Court held in *District of Columbia v. Heller*, 554 U.S. 570 (2008), that the Second Amendment of the United States Constitution “protects an individual right to possess a firearm unconnected to service in a militia, and to use that arm for traditionally lawful purposes, such as self-defense within the home.” As Justice Scalia’s opinion in *Heller* pointed out, Sir William Blackstone, the preeminent authority on English law for the Founders, cited the right to bear arms as one of the fundamental rights of Englishmen. Leaving aside the *McDonald v. Chicago* decision, do you personally believe the right to bear arms is a fundamental right?**

Response: I have not analyzed this area of constitutional law so as to form a personal view or belief regarding the issue of fundamental rights. Nor would any personal view or belief interfere with my ability and commitment, if confirmed, to faithfully follow governing precedent. In *McDonald v. City of Chicago*, 130 S.Ct. 3020 (2010), the Supreme Court ruled that an individual's right under the Second Amendment to keep and bear arms is enforceable against the States through the Fourteenth Amendment. In so ruling, the Supreme Court concluded that this Second Amendment right is a fundamental right. If confirmed as a judge for the District of the Virgin Islands, I will follow this and any other related Supreme Court precedent, as well as any applicable precedent of the United States Court of Appeals for the Third Circuit.

- a. Do you believe that explicitly guaranteed substantive rights, such as those guaranteed in the Bill of Rights, are also fundamental rights? Please explain why or why not.**

Response: I have not analyzed this area of constitutional law so as to form a personal view or belief as to whether explicitly guaranteed substantive rights are also fundamental rights. Nor would any personal view or belief interfere with my ability and commitment, if confirmed, to faithfully follow governing precedent. If confirmed as a judge for the District of the Virgin Islands, I will follow applicable Supreme Court and Third Circuit precedent.

- b. Is it your understanding of Supreme Court precedent that those provisions of the Bill of Rights that embody fundamental rights are deemed to apply against the States? Please explain why or why not.**

Response: I have not analyzed this area of constitutional law so as to be fully conversant with the entire body of Supreme Court precedent. However, in *McDonald v. City of Chicago*, 130 S.Ct. 3020, 3036 (2010), the Supreme Court ruled that the Second Amendment right to keep and bear arms is enforceable against the States through the Fourteenth Amendment, and in so doing analyzed whether the right was "fundamental" to our Nation's "scheme of ordered liberty" or "deeply rooted in this Nation's history and tradition."

- c. The *Heller* Court further stated that "it has always been widely understood that the Second Amendment, like the First and Fourth Amendments, codified a pre-existing right." Do you believe that the Second Amendment, like the First and Fourth Amendments, codified a pre-existing right? Please explain why or why not.**

Response: I have not analyzed this area of constitutional law so as to form a personal view or belief as to whether the First, Second and Fourth Amendments codified pre-existing rights. Nor would any personal view or belief interfere with my ability and commitment, if confirmed, to faithfully follow governing precedent. If confirmed as a judge for the District of the Virgin Islands, I will follow the *Heller* decision and any other applicable Supreme Court and Third Circuit precedent.

6. **Some have criticized the Supreme Court’s decision in *Heller* saying it “discovered a constitutional right to own guns that the Court had not previously noticed in 220 years.” Do you believe that *Heller* “discovered” a new right, or merely applied a fair reading of the plain text of the Second Amendment?**

Response: The decision in *Heller* was based on the Supreme Court’s reading of the text of the Second Amendment.

- a. **Similarly, during his State of the Union address, the President said the Supreme Court’s decision in *Citizens United v. FEC*, 558 U.S. ____ (2010), “reversed a century of law” and others have stated that it abandoned “100 years of precedent.” Do you agree that the Court reversed a century of law or 100 years of precedent in the *Citizens United* decision? Please explain why or why not.**

Response: I have not analyzed this area of law so as to form a personal view on this subject. Nor would any personal view interfere with my ability and commitment, if confirmed, to faithfully follow governing precedent. If confirmed as a judge for the District of the Virgin Islands, I will follow the Supreme Court’s decision in *Citizens United v. FEC*.

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

Response: In both *Heller* and *McDonald*, the Supreme Court noted that the right to keep and bear arms guaranteed by the Second Amendment is not without its limitations. In that regard, the Court cited certain prohibitions or restrictions regarding firearms that would be unaffected by the Court’s ruling, such as the possession of firearms by felons and the mentally ill, the carrying of firearms in sensitive places, and the placing of conditions on the commercial sale of firearms. However, the Court did not address the full scope of the Second Amendment, including all of the limitations to the individual right to keep and bear arms. If confirmed as a judge for the District of the Virgin Islands, I will closely examine and follow the decision and reasoning in *Heller*, *McDonald*, and any other applicable Supreme Court and Third Circuit precedent in addressing issues related to the scope of the individual Second Amendment right.

8. **Is the Second Amendment 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: The Supreme Court in *Heller* and *McDonald* did not address the full scope of the individual right to keep and bear arms under the Second Amendment. If confirmed as a judge for the District of the Virgin Islands, I will closely examine and follow the decision and reasoning in *Heller*, *McDonald*, and any other applicable Supreme Court and Third Circuit precedent in addressing issues related to the scope of the individual Second Amendment right.

9. **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 judge for the District of the Virgin Islands, I would be bound to follow governing precedent. I would therefore follow the Supreme Court’s decision and reasoning in *Roper v. Simmons* and any other applicable Supreme Court and Third Circuit precedent.

- 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: If confirmed as a judge for the District of the Virgin Islands, I would be bound to follow governing precedent. In determining what constitutes cruel and unusual punishment under the Eighth Amendment, I would therefore follow Supreme Court precedent on this issue, including *Roper v. Simmons*, as well as any applicable Third Circuit precedent.

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

Response: If confirmed as a judge for the District of the Virgin Islands, I would follow the analytical approach adopted by the governing precedent in the Supreme Court and the Third Circuit.

- 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: I do not believe that a judge could find that the death penalty is unconstitutional in all cases in view of the Supreme Court precedent establishing that the death penalty is constitutional, except in certain discrete circumstances.

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

Response: I do not believe that any such analysis would be appropriate or warranted in view of the Supreme Court precedent establishing that the death penalty is constitutional, except in certain discrete circumstances.

- e. **When determining what the “evolving standards of decency” are, justices have looked to different standards. Some justices have justified their decision by looking to the laws of various American states,¹ in addition to foreign law, and in other cases have looked solely to the laws and traditions**

¹ *Roper v. Simmons*, 543 U.S. 551, 564-65.

of foreign countries.² Do you believe either standard has merit when interpreting the text of the Constitution?

Response: If confirmed as a judge for the District of the Virgin Islands, the standards that would have merit for purposes of my decision making would be those standards sanctioned by Supreme Court precedent.

i. If so, do you believe one standard more meritorious than the other? Please explain why or why not.

Response: Please see my response to Question No. 9(e).

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

Response: I do not believe it is proper for judges to rely on foreign or international laws or decisions in determining the meaning of the Constitution unless Supreme Court precedent so dictates.

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

Response: I do not believe it is appropriate for judges to look to foreign countries for wise solutions or good ideas to legal and constitutional problems unless Supreme Court precedent so dictates.

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

Response: If confirmed as a judge for the District of the Virgin Islands, I would not consider foreign law when interpreting the Constitution unless Supreme Court precedent so dictates.

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

Response: Regardless of whether foreign sources might be of assistance in discrete instances, I do not believe it is appropriate for judges to look to foreign sources to interpret our laws unless Supreme Court precedent so dictates.

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

Response: If confirmed as a judge for the District of the Virgin Islands, I would not consider foreign law when interpreting the Eighth Amendment or any other amendments unless Supreme Court precedent so dictates.

² *Graham v. Florida*, 130 S.Ct. 2011, 2033-34.