

**Responses of Benita Y. Pearson
Nominee to the U.S. District Court for the Northern District of Ohio
to the Written Questions of Senator Tom Coburn, M.D.**

- 1. In your testimony last week in response to one of my questions, you stated that “the Animal Defense Fund has a goal that is not my goal.” Does that mean you oppose the Animal Legal Defense Fund’s goal of creating an Animal Bill of Rights?**

Response: I am not familiar with the Animal Legal Defense Fund’s goal of creating an Animal Bill of Rights or the text of any such document. Therefore, I have no view on that matter.

- a. Do you believe animals should have standing in court?**

Response: Existing law does not confer standing upon animals.

- b. If so, to what extent?**

Response: Animals do not have standing under existing law. On a case by case basis, however, courts have addressed whether standing should be conferred upon the legal representative of an animal. *See, e.g., Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992) (finding that respondent lacked standing); *Animal Legal Defense Fund v. Glickman*, 154 F.3d 426 (D.C. Cir. 1998) (*en banc*) (finding ALDF had standing to challenge treatment of primates). If confirmed as a United States District Judge, I will apply the applicable legal precedent.

- 2. You also stated that you are “not an advocate for animal rights” but that you are “an advocate for doing what is in the best interest of animals.” Can you explain that distinction?**

Response: Animal rights is not a term I use. Based upon your use of that term at the hearing and in these questions, I think it refers to abstract entitlements not necessarily based upon or attached to existing law. My understanding is that the law is intended to do what is in the best interest of animals and humans. If confirmed as a United States District Judge, I will apply existing law to the facts in a fair and impartial manner.

- 3. ALDF’s animal bill of rights advocates for the “right of farm animals to an environment that satisfies their basic physical and psychological needs” and “the right of wildlife to a natural habitat, ecologically sufficient to a normal existence and self-sustaining species population.” Do you agree with these rights for animals?**

Response: I am not familiar with the text of the ALDF’s Bill of Rights beyond your quoted language above. Unless the ALDF’s Animal Bill of Rights is enacted by Congress and made law, I would not apply it. If confirmed, I will apply existing law.

- a. **If this bill of rights were enacted, who would determine what a farm animal's "basic psychological needs" are?**

Response: I am not familiar with the text of the ALDF's Bill of Rights beyond your quoted language above. If ALDF's Animal Bill of Rights is enacted by Congress and I am confirmed and called upon to interpret it, I would do so as I would any other statute.

- b. **Would the "right of wildlife to a natural habitat, ecologically sufficient to a normal existence and self-sustaining species population" trump a business' right to develop land?**

Response: I am not familiar with the text of the ALDF's Bill of Rights beyond your quoted language above. If ALDF's Animal Bill of Rights is enacted by Congress and I am confirmed and called upon to interpret it, I would do so as I would any other statute.

- c. **Would it trump the government's right to patrol the borders of our country if such patrol might interfere with local wildlife?**

Response: I am not familiar with the ALDF's Bill of Rights and, therefore, cannot speak to who would make these determinations. If ALDF's Animal Bill of Rights is enacted by Congress and I were confirmed and called upon to interpret it, I would do so as I would any other statute.

- d. **How do you balance those interests?**

Response: If confirmed as a United States District Judge, I would consider the facts and apply the applicable law.

4. Professor Cass Sunstein has written the following:

[A]nimals should be permitted to bring suit, with human beings as their representatives, to prevent violations of current law ... Any animals that are entitled to bring suit would be represented by (human) counsel, who would owe guardian like obligations and make decisions, subject to those obligations, on their clients' behalf.

- a. **Do you agree with Professor Sunstein?**

Response: I do not know the context of this quoted language. Animals do not have standing under existing law. However, courts have ruled that, to the extent an animal has a legal interest that is justiciable, then that legal issue should be presented *via* competent legal representation, as is the case for other non-human litigants such as corporations.

b. Do you believe an animal should be classified as “property” in our legal system?

Response: Animals are classified as property. *See, e.g., Sentell v. New Orleans*, 166 U.S. 698 (1897) (addressing the property status of dogs). If confirmed as a United States District Judge, I will follow this and all other applicable precedent.

5. In your testimony you mentioned that you are “an advocate for what is in the best interest of animals and, at times, that coincides with doing what is in the best interests of animals and humans.” How you do think we should handle animal rights when they conflict, rather than coincide, with the best interests of humans?

Response: If confirmed as a United States District Judge, I would follow existing precedent and applicable law, in determining how to handle animal rights when they conflict, rather than coincide, with the best interests of humans.

a. Must those rights be balanced or does the interest of humans always supersede the interests of animals?

Response: Like all conflicting interests wherein the law is implicated, the matter would have to be decided based upon its facts and the applicable law. If confirmed as a United States District Judge, I would follow existing precedent and applicable law.

6. In response to my final question, you suggested that the determination as to whether slaughtering a steer infringes upon the rights of that steer depends upon whether the slaughter is “necessary ... in order to provide food for those who would otherwise go hungry.” Is it your belief, then, that a slaughter is inappropriate unless it is *necessary* to prevent human starvation?

Response: No.

a. What if the meat from the steer will be used to feed humans who could otherwise subsist on a strictly vegetarian diet without any threat of starvation?

Response: To my knowledge there is no prohibition against using meat from a steer in that fashion. If confirmed as a United States District Judge, I would follow existing precedent and applicable law.

7. Do you believe that trophy hunting should be illegal since it is not necessary for human subsistence?

Response: No. Hunting, within the parameters permitted by law, is legal. If confirmed as a United States District Judge, I would follow existing precedent and applicable law.

8. 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: In *Gonzales v. Raich*, 545 U.S. 1, 23 (2005), the Supreme Court indicated that its *Lopez* and *Morrison* decisions are consistent with prior Supreme Court Commerce Clause decisions.

- b. **Why or why not?**

Response: In *Gonzales v. Raich*, the Court rejected a reading of *Lopez* and *Morrison* as inconsistent with prior Commerce Clause precedent. 545 U.S. 1, 23 (2005). Specifically, the Court rejected the respondent's "myopic focus" on *Lopez* and *Morrison*, which "overlook the larger context of modern-era Commerce Clause jurisprudence preserved by those cases." *Id.*

9. **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 believe that the Constitution constantly evolves as society interprets it. Absent a constitutional amendment, the words of the Constitution do not change. The words of the Constitution should be given their plain meaning, and, where there is ambiguity, the intent of the framers should be given great weight. The framers, however, did not envision all the issues that confront us today, particularly, for example, issues presented by developments in technology. In these situations, I believe a judge should apply the words of the Constitution and constitutional principles, as construed by applicable Supreme Court case law.

10. **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: I am bound by the Supreme Court's rulings and, if confirmed as a United States District Judge, I would apply Supreme Court precedent.

11. **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: The decisions in *Roper* and *Lawrence* were ultimately decided based upon United States law. The mention of foreign law does not change that. I fully accept that as precedent to be followed, and will do so if confirmed as a United States District Judge. A decision by the Supreme Court should help to develop, clarify or harmonize the law. To that end, some

Justices have found it useful, for purposes of comparison, to explore how other countries handle certain issues. For example, the Supreme Court has looked to foreign law, on occasion, to a limited extent, for purposes of comparison, though always relying on American law. Beyond this, having not reviewed the briefs filed by the parties, having not read all of the decisions cited within the majority and dissenting opinions, and having not heard the oral arguments in the action, I am not in a position to state any viewpoint regarding the correctness of the majority's dicta.

a. Do you believe foreign law has any bearing on a court's interpretation of the Eighth Amendment?

Response: If confirmed as a United States District Judge, I would not interpret the Constitution or its amendments based upon foreign law.

b. What about any other amendments?

Response: If confirmed as a United States District Judge, I would not interpret the Constitution or its amendments based upon foreign law.