

Responses of Anthony J. Battaglia
Nominee to be United States District Judge for the Southern District of California
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.

- 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, I believe that the Constitution should be applied as written and as interpreted by the Supreme Court.

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

Response: No, I believe that the Constitution should be applied as written and as interpreted by the Supreme Court.

- 4. 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, empathy has no role in arriving at just decisions and outcomes.

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

Response: The Supreme Court has held that Congress has broad power to regulate under the Commerce Clause. But the Court has said in *United States v. Morrison*, 529 U.S. 598 (2000), and *United States v. Lopez*, 514 U.S. 549 (1995), that the power is not unlimited. I would follow the law as stated by the Supreme Court in deciding whether any particular transaction is subject to the Commerce Clause.

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

Response: The Supreme Court has recently clarified the scope of the Second Amendment in *District of Columbia v. Heller*, 128 S.Ct. 2783 (2008), and *McDonald v. City of Chicago*, 130 S.Ct. 3020 (2010), and recognized that some limitations apply. The

Supreme Court did not identify a complete list of all limitations, and issues of limitations are being litigated around the country.

- 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: In *Heller* and *McDonald*, the Supreme Court recognized a number of limitations on individual gun possession, but they did not settle every question about the legality of possible restrictions on such possession. Those issues are now being litigated. If confirmed I would follow applicable precedent in determining the legality of any such restrictions.

- 7. 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 I would apply Supreme Court case law.

- 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: No, I believe that the Constitution should be applied as written and as interpreted by the Supreme Court.

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

Response: I would apply the analysis established by Supreme Court case law.

- 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: In that the Supreme Court has held that the death penalty is Constitutional, a U.S. District Judge would be precluded from making such a finding.

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

Response: In that the Supreme Court has held that the death penalty is Constitutional, no factors could cause a U.S. District Judge to rule or make such a finding.

- 8. 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. 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: I would not consider foreign law when interpreting the Constitution.

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

Response: No.

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

Response: No.