

Responses of James K. Bredar
Nominee to be United States District Judge for the District of Maryland
to the Written Questions of Senator Tom Coburn, M.D.

- 1. In *Kennedy v. Louisiana*, the Supreme Court held that the death penalty for the crime of child rape always violates the Eighth Amendment. Writing for a five-justice majority, Justice Kennedy based his opinion partly on the fact that 37 jurisdictions – 36 states and the federal government – did not allow for capital punishment in child rape cases.**

- a. Given the heinousness of the crime, as well as the new information on the federal government’s codification of capital punishment in child rape cases under the UCMJ, do you believe *Kennedy v. Louisiana* was wrongly decided? If not, why?**

Response: As a U.S. District Judge, I would be obligated to follow the precedents established in rulings of the U.S. Supreme Court regardless of personal belief. I believe that judges are obligated to apply the law and controlling precedent faithfully regardless of personal views. Nothing in my personal views and convictions would prevent me from faithfully following the law in a death penalty case, and I would impose the death penalty when required by the law, which, of course, includes the precedents of the U.S. Supreme Court.

- b. Following the Supreme Court’s decision, President Obama announced at a press conference: “I think that the death penalty should be applied in very narrow circumstances for the most egregious of crimes. I think that the rape of a small child, 6 or 8 years old, is a heinous crime.” Do you agree with that statement?**

Response: I agree that rape of a child is an especially heinous offense. With respect to when the death penalty should be applied, if I am confirmed as a U.S. District Judge, I would faithfully follow the precedents established in rulings of the U.S. Supreme Court in the death penalty context as in all other contexts.

- 2. In *Atkins v. Virginia*, the Supreme Court ruled that the imposition of the death penalty on mentally retarded defendants constituted cruel and unusual punishment. In its majority opinion, Justice Stevens stated that the “clearest and most reliable objective evidence of contemporary values is the legislation enacted by the country’s legislatures,” and that the majority first reviewed “the judgment of legislatures that have addressed the suitability of imposing the death penalty on the mentally retarded.” The majority cited the fact that 18 States, less than half of the 38 States that permitted capital punishment, had recently enacted legislation barring execution of the mentally retarded as evidence that a “national consensus” existed about the propriety of executing the mentally retarded.**

- a. **Do you believe that the legislative acts of 47% of the country equates to a national consensus?**

Response: I do not have a view on what constitutes a national consensus. I do believe that a U.S. District Judge is obligated to follow the precedents set in rulings of the U.S. Supreme Court, and if confirmed I would faithfully do so in the death penalty and all other contexts.

- b. **In its majority opinion, the Court stated: “Moreover, within the world community, the imposition of the death penalty for crimes committed by mentally retarded offenders is overwhelmingly disapproved. Brief for The European Union as *Amicus Curiae* in *McCarver v. North Carolina*, O. T. 2001, No. 00—8727, p. 4.” Do you personally believe it was appropriate for the Court to consider the opinion of the “world community” when interpreting the Eighth Amendment?**

Response: A judge’s personal beliefs have no role in the resolution of a case before him, and my personal views as to whether the Supreme Court should have included a particular consideration in their resolution of the case is not relevant in my application of the precedent flowing from that case. If confirmed, I would faithfully follow the applicable law and binding precedent in the cases before me.

3. **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 a fixed text, except when lawfully amended pursuant to Article V.

4. **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: I believe *Lopez* and *Morrison* are consistent with the Supreme Court’s earlier Commerce Clause decisions because the decisions themselves indicate as much, and the Court, in *Gonzales v. Raich*, 545 U.S. 1 (2005), confirmed it.

5. **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 to serve as a U.S. District Judge, I would be obligated to follow the precedents set out in rulings of the U.S. Supreme Court and I would faithfully do so regardless of personal belief. The holding in *Roper* is binding precedent and I would follow it.

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

Response: If I were in circumstances where it became necessary to determine “evolving standards of decency,” I would do so in a manner that applied the controlling precedents of the U.S. Supreme Court and the Court of Appeals for the Fourth Circuit.

- 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: Given that the U.S. Supreme Court has held that the death penalty is constitutional in some circumstances, a U.S. District Judge would be precluded from making such a finding.

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

Response: Given that the U.S. Supreme Court has held that the death penalty is constitutional in some circumstances, no factors could cause a U.S. District Judge to conclude and rule otherwise.

6. **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, unless the U.S. Supreme Court or the Court of Appeals for the Fourth Circuit hold otherwise.

- a. **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 except if binding precedent required me to do so.

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

Response: In deciding a case, I do not believe it proper for a judge to consider “ideas and solutions” from any source other than those allowed by applicable law and binding precedent.

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

Response: No, unless directed to do so by applicable law or binding precedent from the U.S. Supreme Court or the U.S. Court of Appeals for the Fourth Circuit.

- 7. In a case captioned *A.B. v. Lawson*, the parent of a disabled student sued a school district challenging an Administrative Law Judge’s (ALJ) determination that the student’s individualized education programs complied with the Individuals with Disabilities Act. The ALJ determined that that the student’s programs were reasonable and denied the request for reimbursement. On appeal, you reversed. The Fourth Circuit reversed your ruling stating: “The district court substituted its own views on educational policy ... repudiated the findings of the ALJ [and] simply adopted the worldview of [the student’s] experts and their perspectives on proper educational policy.” The Fourth Circuit concluded: “In sum, the magistrate judge ignored the congressional preference for mainstreaming, clearly and strongly substituted its views on education and IDEA for that of Congress, and failed to accord the ALJ’s factual findings the requisite degree of deference.” Do you believe you substituted your own views for those of the ALJ? If not, please explain.**

Response: The U.S. Court of Appeals for the Fourth Circuit reversed my opinion in this case – the only time it has done so in my twelve years on the bench – and I accept the Court’s judgment. I approached this case, as I approach every case before me, by seeking to correctly apply the law to the facts. I do not believe that it is ever appropriate for a judge to decide a case based on his own policy views. It was not my intention to do so in this case.