

Responses of Denise Jefferson Casper
Nominee to be United States District Judge for the District of Massachusetts
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 respectfully do not agree with this perspective. The Constitution, as interpreted by the Supreme Court, was written to withstand the course of time and, with amendments over time, it has done so.

- 2. 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: In *Lopez* and *Morrison*, the Supreme Court noted that its rulings in those cases were consistent with its earlier Commerce Clause precedent and it noted the same in its later decision, *Gonzales v. Raich*, 545 U.S. 1, 23-25 (2005).

- 3. 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: Justice Kennedy’s analysis in *Roper v. Simmons* constituted the majority opinion in that case. If I am confirmed, I will be bound to follow Supreme Court precedent and will do so.

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

Response: The Supreme Court has ruled that “evolving standards of decency” are part of the legal framework for determining whether a criminal penalty rises to the level of cruel and unusual punishment under the 8th Amendment. If I am fortunate enough to be confirmed by the Senate, I will follow the precedent that the Supreme Court has set.

- 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: No. The Supreme Court has held that the death penalty is constitutional except in certain, limited instances. Accordingly, a federal district court judge, bound to follow Supreme Court precedent, could not rule that the death penalty was unconstitutional in all cases.

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

Response: If I am confirmed and a constitutional challenge to the death penalty in a particular case was raised before me, I would apply and follow the applicable precedent of the Supreme Court and the Court of Appeals for the First Circuit.

4. 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: Contemporary foreign or international laws or decisions are not binding precedent for any court of the United States. I would not rely on such law unless the precedent of the Supreme Court or the Court of Appeals for the First Circuit required me to do so.

a. Is it appropriate for judges to look for foreign countries for "wise solutions" to legal problems?

Response: No. I would only look to foreign law if the precedent of the Supreme Court or the Court of Appeals for the First Circuit required me to do so.

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

Response: None, unless the Supreme Court or the Court of Appeals for the First Circuit said otherwise.

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, except to the extent that the precedent of the Supreme Court or the Court of the Appeals for the First Circuit requires otherwise.