

Responses of Edmond E-Min Chang
Nominee to be United States District Judge for the Northern District of Illinois
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. 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 *Gonzales v. Raich*, 545 U.S. 1, 23-25 (2005), the Supreme Court explained that *Lopez* and *Morrison* were consistent with prior Commerce Clause precedent because the statutes at issue in *Lopez* and *Morrison* did not regulate economic activity.

- 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 comprised an opinion of a majority of the Supreme Court, and if confirmed as a district judge, I would be bound to follow that precedent.

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

Response: I would follow any applicable Supreme Court case law and Seventh Circuit precedent. In *Roper*, the Supreme Court’s analysis began with legislative enactments and state practice, followed by a determination of the proportionality of the punishment at issue. 543 U.S. 551, 563-74.

- 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: The Supreme Court has rejected the view that the death penalty is unconstitutional in all cases, and thus a district judge could not make such a finding.

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

Response: Because the Supreme Court has rejected the view that the death penalty is unconstitutional in all cases, a district judge would have no basis to apply any factors to ignore that binding precedent.

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: No.

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

Response: As a judge of the United States courts, if confirmed I would be bound to follow the laws of the United States, not to resolve legal problems by reference to foreign countries.

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

Response: Under no circumstances would I do so, unless the binding decisions of the Supreme Court or Seventh Circuit required 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, unless the binding decisions of the Supreme Court or Seventh Circuit required otherwise.