

**Responses of John A. Gibney
Nominee to be United States District Judge for the Eastern District of Virginia
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, 3 (2005), the Supreme Court explained that *Lopez* and *Morrison* are consistent with earlier Commerce Clause decisions.

- 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: I have not had occasion to consider the analysis referred to here. Justice Kennedy’s decision in *Roper* is binding precedent that district judges must follow.

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

Response: I would follow the applicable precedents of the Supreme Court and the United States 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: No. The Supreme Court has held that the death penalty is a constitutional punishment, so a district judge could not find that capital punishment is unconstitutional in all cases.

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

Response: The relevant factors are those set forth in controlling precedent of the Supreme Court and the United States Court of Appeals for the Fourth 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: No, unless the Supreme Court or Fourth Circuit ever say otherwise.

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

Response: No.

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

Response: Unless instructed to do so by binding precedent, I would not do so.

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. The customs and mores of other countries play no role in the interpretation of our laws.

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

Response: No, unless the Supreme Court or Fourth Circuit ever instruct otherwise.