

Responses of Mark A. Goldsmith
Nominee to the United States District Court for the Eastern District of Michigan
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?**

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. Generally speaking, are *Lopez* and *Morrison* consistent with the Supreme Court’s earlier Commerce Clause decisions?**

In *Gonzales v. Raich*, 545 U.S. 1, 23-25 (2005), the United States Supreme Court held that *Lopez* and *Morrison* are consistent with the Supreme Court’s earlier Commerce Clause decisions. If confirmed by the United States Senate, I would follow all decisions of the United States Supreme Court.

- b. Why or why not?**

The United States Supreme Court explained in *Gonzales* that *Lopez* and *Morrison* were consistent with earlier Commerce Clause decisions because the statutory schemes in those cases did not address 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?**

Justice Kennedy’s analysis is the law of the land. If confirmed, I would follow that decision, as I will follow all decisions of the United States Supreme Court.

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

If confirmed, I would follow all applicable decisions of the United States Supreme Court and the United States Court of Appeals for the Sixth Circuit in determining the meaning and applicability of the concept of “evolving standards of decency,” should that issue come before me as a trial judge.

- 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?**

The United States Supreme Court has rejected the argument that the death penalty is unconstitutional in all cases. Based on that holding, I do not see how a judge on a lower court could conclude that the death penalty is unconstitutional in all cases.

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

If confirmed, I would follow whatever factors are set forth in applicable decisions of the United States Supreme Court and the United States Court of Appeals for the Sixth 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?

No.

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

See above.

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

No.