

Response of Andrew P. Gordon
Nominee to be United States District Judge for the District of Nevada
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.

a. If not, please explain.

Response: The Constitution expresses the core concepts and foundations of our government and the fundamental rights of citizens. Those principles do not change over time, except through Constitutional amendment.

- 2. Do you believe judicial doctrine rightly incorporates the evolving understandings of the Constitution forged through social movements, legislation, and historical practice?**

Response: No.

a. If not, please explain.

Response: The core concepts and principles of the Constitution do not change over time. District judges are to follow the legal precedents issued by the Supreme Court of the United States and the Courts of Appeals. If those precedents evolve over time (e.g., from *Plessy v. Ferguson* to *Brown v. Board of Education*), district judges are bound to abide by those new precedents.

- 3. What principles of constitutional interpretation would you look to in analyzing whether a particular statute infringes upon some individual right?**

Response: I would begin with the plain language of the Constitution and the statute at issue. If the statute can be reasonably interpreted as constitutional, the inquiry is over. If not, I would look to the precedents of the Supreme Court. If there were none, I would look to precedents within my Circuit Court of Appeals, then from within my district, and then from other circuit and district courts. Absent any precedent on point, I would look for cases analyzing the constitutionality of analogous statutes.

- 4. 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 and you are obliged to follow it, but do you agree with Justice Kennedy’s analysis?**

Response: I have not studied that opinion. In any event, as a prospective judge, I do not believe I should express a personal opinion about any Supreme Court decision. If confirmed, I would faithfully follow all decisions of the Supreme Court because they are binding precedent.

- a. When determining what the “evolving standards of decency” are, justices have looked to different standards. Some justices have justified their decision by looking to the laws of various American states, in addition to foreign law, and in other cases have looked solely to the laws and traditions of foreign countries. Do you believe either standard has merit when interpreting the text of the Constitution?**

Response: The laws and traditions of foreign countries do not control the interpretation of the Constitution of the United States. The Supreme Court has held that reference to the laws of the various states is permissible in certain circumstances. If confirmed as a district judge, I would follow the precedents of the Supreme Court.

- i. If so, do you believe one standard more meritorious than the other? Please explain why or why not.**

Response: As set forth above, I do not believe the laws and traditions of foreign countries control the interpretation of the Constitution.

- 5. In your view, is it ever proper for judges to rely on foreign or international laws or decisions in determining the meaning of the Constitution?**

Response: Judges should not rely on foreign laws or decisions to determine the meaning of the Constitution.

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

Response: Unless directed to do so by a legal precedent of the Supreme Court, I cannot think of such a circumstance.

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

Response: No.