

**Responses of Ellen Lipton Hollander
Nominee to be United States District Judge for the District of Maryland
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. Its text is fixed, and judges may not alter the terms of the text with the times.

- 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* are consistent with the Supreme Court’s earlier Commerce Clause decisions?**

Response: Yes.

- b. Why or why not?**

Response: In *Lopez* and *Morrison*, and more recently in *Gonzales v. Raich*, 545 U.S. 1, 23-25 (2005), the United States Supreme Court stated that its decisions in these cases were consistent with its 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: If confirmed by the Senate, I would be bound by the decisions of the United States Supreme Court, including *Roper*.

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

Response: If confirmed, I would abide by all applicable decisions of the United States Supreme Court and the United States Court of Appeals for the Fourth Circuit in ascertaining the meaning of the concept “evolving standards of decency.”

- 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 United States Supreme Court has foreclosed any contention that the death penalty is unconstitutional in all cases.

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

Response: For a federal trial judge, the factors relevant to the judge's analysis are those articulated by the United States Supreme Court and the particular appellate court that reviews the rulings of the trial court.

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 directed to do so at some point in the future by the United States Supreme Court or the United States Court of Appeals for the Fourth Circuit.

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

Response: Only when binding precedent requires me to do so.

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.

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

Response: No, unless directed to do so at some point in the future by the United States Supreme Court or the United States Court of Appeals for the Fourth Circuit.