

Responses of Paul Kinloch Holmes, III
Nominee to be United States District Judge for the Western District of Arkansas
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. Justice William Brennan once said: “Our Constitution was not intended to preserve a preexisting society but to make a new one, to put in place new principles that the prior political community had not sufficiently recognized.” Do you agree with him that constitutional interpretation today must take into account this supposed transformative purpose of the Constitution?**

Response: I believe that the Constitution should be interpreted from text of the document, and that the interpretation should follow rules of construction and interpretation as determined by the Supreme Court of the United States or the court of appeals for the circuit in which the judge sits.

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

Response: No.

- 4. Do you believe empathy is an essential ingredient for arriving at just decisions and outcomes and should play a role in a judge’s consideration of a case?**

Response: I believe a district judge’s decision should be based on the facts and the applicable law, and not on an empathetic or sympathetic standard.

- 5. Is any transaction involving the exchange of money subject to Congress’s Commerce Clause power?**

Response: The Supreme Court of the United States has determined that Congress has broad authority to regulate under the Commerce Clause of the Constitution, and I would follow the decisions of the Supreme Court of the United States in determining the scope of that authority.

- 6. What limitations remain on the individual Second Amendment right now that it has been incorporated against the States?**

Response: The Supreme Court of the United States has held that there is an individual right to bear arms with certain limitations, and I will follow the law as determined by the Supreme Court of the United States in regard to those limitations.

- a. **Is it limited only to possession of a handgun for self-defense in the home, since both *Heller* and *McDonald* involved cases of handgun possession for self-defense in the home?**

Response: The scope of those limitations continues to be litigated. I will follow the precedent of the Supreme Court of the United States.

7. **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 opinion in *Roper v. Simmons*, 543 U.S. 551 (2005) is the law of the land, and I would follow the precedent of the Supreme Court of the United States should I have the occasion to handle a capital murder case.

- a. **Do you agree that the Constitution’s prohibition on cruel and unusual punishment “embodies a principle whose application is appropriately informed by our society’s understanding of cruelty and by what punishments have become unusual?”**

Response: I would follow the decisions of the Supreme Court of the United States in determining what punishment constitutes cruel and unusual punishment under the Constitution.

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

Response: I would not determine “evolving standards of decency” as I would be bound to follow the law as decided by the Supreme Court of the United States and the Court of Appeals for the Eighth Circuit.

- c. **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. I do not think a district judge can make such a finding as a district judge would be bound to follow the precedent of the Supreme Court of the United States.

- d. **What factors do you believe would be relevant to the judge’s analysis?**

Response: A district court judge would look to those factors as determined by the Supreme Court of the United States.

8. **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. I would only consider foreign law if directed by the Supreme Court of the United States or the Court of Appeals for the Eighth Circuit.

- a. Is it appropriate for judges to look for foreign countries for “wise solutions” and “good ideas” to legal and constitutional problems?**

Response: No.

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

Response: None. I do not think a judge should consider foreign law to interpret the Constitution.

- 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.