

Response of Ketanji B. Jackson
Nominee to be United States District Judge for the District of Columbia
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 embodies fundamental principles of limited government authority that originated with the Founders and do not “evolve.”

- 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: Courts must apply established constitutional principles to new circumstances, but the meaning of the Constitution itself does not evolve nor does it incorporate new understandings resulting from social movements, legislation, or historical practices.

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

Response: In analyzing whether a statute infringes upon an individual right, I would look to the plain language of the statute and apply the binding precedents of the Supreme Court and the D.C. Circuit that analyze the statute or an analogous provision. My role as a district court judge would be to apply the law as handed down by the Supreme Court and the D.C. Circuit to the facts before me.

- 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: The Supreme Court’s decision in *Roper* is binding precedent and I would faithfully apply it, if confirmed as a district court judge. I do not believe that it would be appropriate for me to express my personal view of the Supreme Court’s decision. My

personal views on this or any other subject matter would not affect my handling of any case that I might be assigned as a district court judge.

- 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 are not relevant to the interpretation of the text of the U.S. Constitution. The Supreme Court has indicated that the laws of the American States can be relevant under certain circumstances, and if confirmed, I would faithfully apply any precedent on this issue.

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

Response: Please see previous answer.

- 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: No.

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

Response: Please see answer to question 4(a).

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

Response: Any ideas and solutions to legal problems that foreign nationals may have would be matters for Congress to consider in making policy decisions regarding legal issues, not bases for a court’s interpretation of the existing laws of the United States.