

**Responses of Brian Anthony Jackson
Nominee to the U.S. District Court for the Middle District of Louisiana
to the Written Questions of Senator Tom Coburn**

- 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. In my view, the Constitution is not a document that evolves as society interprets it. The original text of the Constitution should be given great deference by the courts. Consideration of its original meaning should be the controlling factor in its interpretation.

- 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?**

Response: Yes.

- b. Why or why not?**

Response: The Supreme Court ruled in *Gonzalez v. Raich*, 545 U.S. 1 (2005), that *Lopez* and *Morrison* are consistent with prior decisions interpreting the Commerce Clause. In *Gonzalez*, the Court noted that, “[o]ur opinion in *Lopez* casts no doubt on the validity” of the ability of Congress to regulate economic activities that affect interstate commerce.

- 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: Justice Kennedy’s analysis formed the basis of the holding in the *Roper* case. As a district court judge, I am bound to following the decisions of the court, notwithstanding my personal views.

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

Response: As a district judge, I would adhere to the precedents of the Supreme Court and the Court of Appeals, including those that provide guidance on this issue.

- 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. Because the Supreme Court has ruled that capital punishment is a constitutionally-sanctioned penalty, it would not be appropriate for a district judge to ever consider “evolving standards of decency” in applying the death penalty.

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

Response: *Roper* is now binding precedent on all federal judges. As such, I would be guided by the factors identified by the Supreme Court’s decision in the case, notwithstanding my personal views on the appropriateness of the factors.

- 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.

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

Response: See above.

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

Response: No.