

Responses of Steve C. Jones
Nominee to be United States District Judge for the Northern District of Georgia
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. The Constitution is a fixed document, unless amended.

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 think that the Constitution should be interpreted by looking to the text of the Constitution, the historical record, and applicable precedent of the United States Supreme Court and Eleventh Circuit.

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

Response: It is my belief that judicial doctrine is derived from the text of the Constitution and applicable precedent of the United States Supreme Court and appellate courts.

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: No.

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

Response: The United States Supreme Court has held that the scope of the Commerce Clause power is not unlimited. If I am confirmed and presented with a case involving application of the Commerce Clause, I would consider the statute at issue and apply applicable Supreme Court and Eleventh Circuit precedent, including *United States v. Lopez*, 514 U.S. 549 (1995), and *United States v. Morrison*, 529 U.S. 598 (2000).

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

Response: Through its holdings in *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008) and *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010), the United States Supreme

Court has left open the question of what limitations on the Second Amendment right remain, except for those expressly identified.

- 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: In reviewing these two cases, it appears that the United States Supreme Court has expressly noted that some limitations exist on the scope of the Second Amendment right; however, whether additional limitations apply has been left for resolution through future cases.

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: If confirmed as a district judge, I would be bound by the precedent of the United States Supreme Court.

- 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: In interpreting the embodiment of the Constitution’s prohibition on cruel and unusual punishment, I would follow the precedent of the United States Supreme Court and Eleventh Circuit.

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

Response: I would determine standards by looking to applicable United States Supreme Court and Eleventh Circuit precedent.

- 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: The United States Supreme Court has found that capital punishment is constitutional; therefore, under present binding authority, I cannot see how a judge can make such a finding.

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

Response: The factors set forth in the precedent of the United States Supreme Court and Eleventh Circuit precedent would be relevant to the judge’s analysis.

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: It would not be proper for judges to rely on contemporary foreign or international laws or decisions in determining the meaning of the United States Constitution, unless binding precedent provides for review of foreign law.

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

Response: In the absence of binding authority providing for consideration of foreign law, I do not think that looking to foreign law would be appropriate.

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

Response: Foreign law should only be looked to when there is binding statutory and/or United States Supreme Court or Eleventh Circuit precedent, which provides for review of foreign law.

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

Response: In the absence of direct authority providing for consideration of foreign law, I do not think that looking to foreign law would be appropriate for proper interpretation of the laws of the United States.

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

Response: No. In the absence of direct authority providing for consideration of foreign law, I do not think that looking to foreign law would be appropriate for proper interpretation of the Constitution of the United States.