

Questions from Senator Cornyn

1. As Solicitor General, you would be charged with defending the Defense of Marriage Act. That law, as you may know, was enacted by overwhelming majorities of both houses of Congress (85-14 in the Senate and 342-67 in the House) in 1996 and signed into law by President Clinton.
 - a. Given your rhetoric about the Don't Ask, Don't Tell policy—you called it “a profound wrong—a moral injustice of the first order”—let me ask this basic question: Do you believe that there is a federal constitutional right to same-sex marriage?

Answer: There is no federal constitutional right to same-sex marriage.

- b. Have you ever expressed your opinion whether the federal Constitution should be read to confer a right to same-sex marriage? If so, please provide details.

Answer: I do not recall ever expressing an opinion on this question.

2. In 2003, the Massachusetts supreme court ruled that there is a constitutional right to same-sex marriage under the Massachusetts constitution. Do you agree with that ruling? Have you ever discussed it with anyone? What did you say?

Answer: I have never studied the Massachusetts Constitution, judicial interpretations of that document, or the SJC's decision, so I do not have an informed view. I moderated a panel on the SJC's decision at Harvard Law School on February 5, 2004, but do not recall stating any views of my own at this event. (I have provided a tape of this event to the Judiciary Committee.) I suspect I participated in informal conversation about the decision when it came out, but I cannot remember anything that I said.

3. Do you believe that the Supreme Court's decision in *Boumediene v. Bush*, which conferred constitutional habeas rights on aliens detained as enemy combatants at Guantanamo, was correctly decided?

Answer: The Solicitor General owes important responsibilities to the Court, one of which is respect for its precedents and for the general principle of *stare decisis*. I do not think it would comport with this responsibility to state my own views of whether particular Supreme Court decisions were correctly decided. All of these cases are now settled law, and as such, are entitled to my respect as the nominee for Solicitor General. In the position of Solicitor General, I would not frequently or lightly ask the Court to reverse one of its precedents, and I certainly would not do so just because I thought the case wrongly decided.

4. Do you believe that the Supreme Court's decision in *Lee v. Weisman*, which held that a nonsectarian invocation at a public school graduation violated the Establishment Clause, was correctly decided?

Answer: My answer to this question is the same as my answer to question #3.

5. Do you believe that the Supreme Court's decision in *Zelman v. Simmons-Harris*, which ruled that school-choice programs that include religious schools don't violate the Establishment Clause, was correctly decided?

Answer: My answer to this question is the same as my answer to question #3.

6. In *Kennedy v. Louisiana*, a case in which the Supreme Court ultimately struck down a Louisiana statute that allowed the death penalty for the aggravated rape of a child, a group of former law lords of the United Kingdom submitted an amicus brief. This brief cited the American Convention on Human Rights and statements of the United Nations Commission on Human Rights, the Inter-American Court of Human Rights, and the Inter-American Commission on Human Rights to argue that international law required that nations that retain the death penalty may not extend the death penalty to crimes to which it does not presently apply.

- a. Do you believe that international law forbids federal and state governments from broadening the application of the death penalty? Please explain your answer.

Answer: I do not believe that international law (assuming it has not been incorporated into domestic federal law) can prevent federal and state governments from broadening the application of the death penalty should they wish to do so. In a case like *Kennedy v. Louisiana*, 128 S. Ct. 2641 (2008), the appropriate question is whether the Eighth Amendment of the U.S. Constitution forbids the application of the death penalty to a particular kind of crime, not whether international law does so.