

**Responses of Lucy H. Koh
Nominee to the U.S. District Court for the Northern District of California
to the Written Questions of Senator Tom Coburn, M.D.**

- 1. In 1996, you made a speech regarding proposed efforts to reform our nation's immigration laws. You said:**

“[t]he progression, or more accurately the regression, of the immigration debate nationwide is very disturbing. The immigration debate is a perfect example of the slippery slope – targeting illegal immigrants at first, then moving to legal immigrants, then moving to legal permanent residents, then moving to naturalized citizens, and now to birthright citizens.”

What did you mean by that comment?

Response: I was noting the expansion of the scope of immigration legislation in 1996. Since that time I have worked on the enforcement of our immigration laws. As an Assistant United States Attorney, I prosecuted immigration cases. As a Special Assistant to the United States Deputy Attorney General, I worked on strengthening enforcement of our nation's borders and on implementing the restrictions on benefits for aliens set forth in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. If confirmed, I would faithfully enforce our immigration laws.

- a. Do you believe the national immigration debate is regressing? Please explain your answer.**

Response: For nearly a decade and a half I have not kept abreast of the debates on immigration policy. Therefore, I cannot comment on the state of the national immigration debate. My last involvement with immigration issues consisted of my efforts to enforce our immigration laws as an Assistant United States Attorney and as a Special Assistant to the United States Deputy Attorney General.

- b. I do not believe there is an automatic right to citizenship for children born to illegal immigrants residing in our country because I believe that the intent of the authors of the Fourteenth Amendment, and records from the Congressional Globe of May 30, 1866, indicate that the citizenship clause was never meant to be applied to children of non-citizens. Further, there are public policy concerns with allowing birthright citizenship to continue. Today, expectant mothers often put themselves in danger crossing our border to ensure their children are born in America. These babies can then act as anchors to eventually pull a large number of extended family members into the country legally.**

- i) Do you believe children born to illegal immigrants residing in our nation should receive automatic citizenship? Why or why not?**

Response: Under existing Supreme Court precedent the United States-born children of certain aliens temporarily present in the United States are automatically United States citizens. If confirmed, I would follow existing and future Supreme Court precedent on this and related issues.

ii) Did you consider the original intent of our Founders when reaching your conclusion? Why or why not?

Response: No, I was relying on existing Supreme Court precedent. If confirmed, I would follow existing and future Supreme Court precedent on this and related issues.

c. In the same speech, you also remarked that “[a]nother way to attack legal and illegal immigrants is to attack their languages. The anti-immigrant sentiment is certainly related to the push for English Only.”

i) Why do you believe English only laws are anti-immigrant?

Response: I do not believe that English Only laws are anti-immigrant. I was merely referring to the tenor of the debate as expressed by some people at the time.

ii) If confirmed, you may be asked to rule on whether English Only laws are constitutional. Are you prepared to apply the law to the facts before you, despite your own personal feelings about these laws??

Response: Yes.

2. 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 does not change unless amended.

3. 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: In *Gonzalez v. Raich*, 545 U.S. 1, 23 (2005), the Supreme Court held that *Lopez* and *Morrison* preserved the “larger context of modern-era Commerce Clause jurisprudence.”

- 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, but do you agree with Justice Kennedy’s analysis?**

Response: Justice Kennedy’s analysis is controlling precedent, which I am bound to follow as a Superior Court judge and, if confirmed, as a federal district judge.

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

Response: I would apply the analysis of controlling Supreme Court precedent.

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: The Supreme Court has found that capital punishment is constitutionally permissible. As a Superior Court judge, I am bound to follow Supreme Court precedent when interpreting the U.S. Constitution, and if confirmed, I would do the same.

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

Response: The factors identified by the Supreme Court in its controlling precedent would be relevant to a judge’s analysis.

- 5. 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: The United States Supreme Court has never relied on foreign or international laws or decisions in determining the meaning of the United States Constitution. All judges must follow the United States Supreme Court in determining the meaning of the United States Constitution.

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

Response: The Supreme Court has never relied on foreign law. If this issue arises, I would follow Supreme Court precedent.

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

Response: No, unless the Supreme Court directs otherwise.