

**Responses of Raymond Joseph Lohier, Jr.
Nominee to be United States Circuit Judge for the Second Circuit
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.

- 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. Do you believe *Lopez* and *Morrison* consistent with the Supreme Court’s earlier Commerce Clause decisions?**

Response: Yes.

- b. Why or why not?**

Response: The Supreme Court has more recently addressed this issue in *Gonzales v. Raich*, which squared the holdings in *Lopez* and *Morrison* with the Court’s Commerce Clause precedent. If confirmed, I would follow that precedent.

- 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: In *Roper*, the Supreme Court relied in part on evolving standards of decency, and, if confirmed, I would faithfully apply that Supreme Court precedent.

- a. Do you believe evolving standards of decency are relevant to a court’s evaluation of the text of the Constitution or Bill of Rights?**

Response: According to the Supreme Court’s binding decision in *Roper*, evolving standards of decency are relevant to assessing the proportionality of punishments for capital offenses under the Eighth Amendment.

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

Response: In assessing the proportionality of punishments for capital cases under the Eighth Amendment, I would, if confirmed, apply and follow the analysis set forth by

the Supreme Court in *Roper*, which directs lower courts to begin with a review of objective indicia of consensus, as expressed by legislative enactments.

- 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 Supreme Court has ruled that the death penalty is not unconstitutional in all cases, and, if confirmed, I would be bound by that precedent.

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

Response: Please see my response above.

- 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: In some very limited circumstances involving the interpretation of international contracts or the obligations of the United States under an international treaty ratified by the United States, it may be necessary to consider international law. The foreign law of foreign nations, by contrast, should have no bearing on the meaning of the Constitution. If confirmed, I would interpret the Constitution according to its text, history, and binding Supreme Court and Second Circuit precedent, not according to the foreign laws of other nations.

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

Response: Please see my response above.

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

Response: Outside of the obligations of the United States under an international treaty ratified by the United States, no.

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

Response: Please see my response above.

- 5. The American Bar Association’s Standing Committee on the Judiciary rated your nomination “Substantial Majority Qualified, Minority Not Qualified.” Were you satisfied with the ABA’s review of your record?**

Response: The ABA did not provide me with any specific information about the scope or nature of its review.

a. Do you believe you deserved the rating you received, specifically the “Minority Not Qualified”?

Response: Although the ABA’s official rating was “Qualified,” I do not agree with the insubstantial minority of the ABA’s Standing Committee on the Judiciary that voted to rate my nomination as “Not Qualified.”

b. Did the ABA explain why you received the “Minority Not Qualified” rating?

Response: The ABA did not explain, and I did not ask, why some member(s) of the ABA’s Standing Committee on the Judiciary disagreed with the substantial majority of the Committee, which determined I was qualified.

c. Did you agree with their analysis of the factors that resulted in the “Minority Not Qualified” rating?

Response: Please see my response above.

d. Did you have an opportunity to provide contrary evidence prior to the Committee’s vote to counter the findings that resulted in the “Minority Not Qualified” rating?

Response: I was not asked to provide and did not volunteer any additional information after I learned about the vote of the ABA’s Standing Committee on the Judiciary.

6. Prior to hear Supreme Court hearing, Justice Sonia Sotomayor asserted that “personal experiences affect the facts that judges choose to see.” Do you agree with Justice Sotomayor’s statement?

Response: I am not familiar with the context in which Justice Sotomayor made that statement, but if confirmed I will objectively and impartially consider all relevant facts. That is the job of a judge.