

**Responses of Jane E. Magnus-Stinson
Nominee to the U.S. District Court for the Southern District of Indiana
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, I do not agree with the reference to the Constitution as a living document that is constantly evolving as society interprets it. The Constitution is the permanent framework for our democracy.

- 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: Perhaps the most accurate answer can come from the Supreme Court itself: “As charted in considerable detail in *United States v. Lopez*, our understanding of the reach of the Commerce Clause, as well as Congress’ assertion of authority thereunder, has evolved over time.” *Gonzales v. Raich*, 545 U.S. 1, 15-16 (U.S. 2005). *Lopez* and *Morrison* can perhaps be read as a further step in that evolution. Yet the Supreme Court has made clear that those decisions remain rooted in, and are therefore consistent with, earlier precedent.

- b. Why or why not?**

Response: As the *Raich* Court further noted: “[T]he larger context of modern-era Commerce Clause jurisprudence [was] preserved by those cases.”
Id. at 23.

- 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 constitutes the majority opinion of the United States Supreme Court, is controlling precedent, and I will follow it.

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

Response: I would follow the analytical framework established by the United States Supreme Court. In *Roper*, the Court stated:

“The beginning point is a review of objective indicia of consensus, as expressed in particular by the enactments of legislatures that have addressed the question. These data give us essential instruction. We then must determine, in the exercise of our own independent judgment, whether the death penalty is a disproportionate punishment”
Roper v. Simmons, 543 U.S. 551, 564 (2005).

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: I do not think any district judge following current controlling precedent could find that “evolving standards of decency” dictate that the death penalty is unconstitutional in all cases. The United States Supreme Court has consistently held otherwise.

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

Response: The factors quoted from *Roper* in response to question 3a, as well as any factors contained in subsequent United States Supreme Court or Circuit precedent, would be relevant to the district judge’s analysis.

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: In interpreting the Eighth or any other amendment I would rely exclusively on United States law and controlling precedent.