

**Responses of Mary H. Murguia
Nominee to be U.S. Circuit Judge for the Ninth 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. To the extent that by “living” document, you mean a Constitution that has an evolving interpretation unmoored from the text, I disagree with that perspective. I believe the Constitution is a fixed document whose text may be changed only through the amendment process.

- 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: Because the Supreme Court has so held. In *Gonzales v. Raich*, 545 U.S. 1 (2005), the Court explained that *Lopez* and *Morrison* were consistent with prior Commerce Clause precedent because the statutes at issue in *Lopez* and *Morrison* did not regulate economic activity.

- 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 majority opinion is accorded the weight of precedent. Therefore, it is a decision that I am bound to follow and do not think it would be appropriate for me to comment on Justice Kennedy’s analysis.

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

Response: I would follow Supreme Court precedent and apply the analysis that the Supreme Court has held should be applied.

- 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 held that the death penalty is constitutional as a general matter. If confirmed, I would follow and apply that precedent.

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

Response: I would follow Supreme Court precedent to determine the relevant factors.

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: There may be instances in which international law, which involves the interpretation of international contracts or the obligations of the United States under a treaty, may be relied on to resolve disputes involving such matters. Foreign law of other countries, by contrast, should not be relied on to determine the meaning of the United States Constitution.

a. Is it appropriate for judges to look for foreign countries for "wise solutions" to legal problems?

Response: It is appropriate to look to foreign law only if our own domestic law requires that I do so.

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

Response: I cannot currently envision any particular circumstance where I would consider foreign law when interpreting the Constitution, but certainly would do so if the Supreme Court requires me to do so.

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

Response: I cannot currently envision any particular circumstance where I would consider foreign law when interpreting statutes, but certainly would do so if the Supreme Court requires me to do so.

d. Would you consider foreign law when interpreting the Eighth Amendment?

Response: If confirmed to the Ninth Circuit, I would adhere to Supreme Court precedent in this and all other areas of the law, as I have done as a district judge.

e. Other amendments?

Response: If confirmed to the Ninth Circuit, I would adhere to Supreme Court precedent in all areas of the law, as I have done as a district judge.