

**Responses of Susan Richard Nelson
Nominee to be United States District Judge for the District of Minnesota
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. The text of the Constitution is fixed, absent amendment through the Article V 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: The Supreme Court stated in both *Lopez* and *Morrison*, and also in *Gonzales v. Raich*, 545 U.S. 1 (2005), that its recent decisions are consistent with earlier Commerce Clause 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: As a United States Magistrate Judge, I have not had occasion to consider the analysis referenced here. In the event that I am confirmed and appointed to serve as a District Judge, I would follow the binding precedent of the Supreme Court and the Court of Appeals.

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

Response: If confirmed as a District Judge, I would apply Supreme Court and appellate precedent, including those cases that provide authority and guidance on this issue.

- 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 capital punishment is not unconstitutional per se, therefore, under current Supreme Court law, a District Judge could not so rule.

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

Response: The factors identified by the Supreme Court in its decisions on capital punishment, including *Roper*.

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: If I am confirmed and appointed as a District Judge, I would not consider foreign or international law in determining a Constitutional question unless controlling Supreme Court or Court of Appeals precedent directed such an approach.

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

Response: If confirmed and appointed as a District Judge, I would only consider foreign or international law in interpreting the Constitution if the decisions of the Supreme Court or the controlling Court of Appeals required as much.

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

Response: If presented with such an argument, I would respond by referring to Supreme Court or controlling appellate court authority.

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

Response: If confirmed and appointed as a District Judge, I would not consider foreign law in interpreting a Constitutional Amendment unless the Supreme Court or controlling appellate court authority directed such an approach.

5. In May 2009, you gave a speech at an Upper Midwest Employment Law Institute Seminar during which you said: "the quality of interpretation for non-English speakers other than Spanish speakers is of variable quality. There are a significant number of cases nation-wide which address this very troubling issue and it is very worthy of addressing today." You stated that as a judge, she is concerned about "the risk of inadequate interpretation in the context of significant cultural bias and misunderstandings in the courthouse." In addition, you commented that "[s]ocial mores of different cultures not only make the context of law and legal proceedings incomprehensible, social mores also prevent evidence from being fully explored" and that "language, despite the best of interpreters, can also be a barrier. Significantly, much of our legal process is not easily translatable into certain languages, such as African or Asian languages."

8 U.S.C.A. § 1423 of the United States Code requires citizens who are naturalized to have “an understanding of the English language, including an ability to read, write, and speak words in ordinary usage in the English language...” Do you have any concerns about this requirement?

Response: No.

- a. Do you believe translators and materials in legal proceedings and courts should be made available in every conceivable language to avoid “the risk of inadequate interpretation?”**

Response: Every criminal defendant should be afforded the opportunity to understand the charges brought against him and his rights under the Constitution.

- b. If not, what limits would you place on the number and variety of languages available.**

Response: The Court endeavors to find competent interpreters for every criminal defendant charged with a crime.

- c. Do you have any concerns about the cost to states and to the federal government if translators and materials are required to be made available in every language?**

Response: It is incumbent on courts to efficiently serve the public, including with respect to the use of interpreters. For example, where a competent interpreter is not available for a particular language, our court has used telephone interpretation as a back-up to meet the need at a reasonable cost.