

Responses of William Joseph Martínez
Nominee to the United States District Court for the District of Colorado
To the Written Questions of Senator Tom Coburn, M.D.

1. At your hearing, you were asked whether you “personally think that the death penalty ... violates the constitutional ban on cruel and unusual punishment?” You responded that “[m]y view is that I think that with time, I think the long arc of history shows that there has been a progression in some nations, and I think in time in this Nation that that day may come. ... What can change is the Supreme Court’s interpretation or reading of certain terms”

- a. Do you believe judges should look to the original intent of those who wrote the Constitution when determining the meaning of words and phrases?

Response: U.S. District Judges are obligated to examine the text of the Constitution applicable to the dispute before them, and to follow and apply those decisions of the U.S. Supreme Court and their respective U.S. Court of Appeals which have interpreted and applied the relevant constitutional text.

- i. Should they be limited to only looking to the text and the original intent of the founders? If not, why?

Response: Please see my response to Question 1(a).

- ii. If judges are limited to only considering whether the founders considered the death penalty “cruel and unusual punishment,” then how can the Supreme Court’s interpretation of those terms change?

Response: Please see my response to Question 1(a).

- b. You testified that you agreed that “[t]he text of the Constitution is clear. And until the last decade, the Supreme Court consistently interpreted the text as one as you are today discussing it. Now through the *Roper* case and the *Kennedy* case, the Supreme Court has chipped away at that view.” How is the Supreme Court justified in “chip[ing] away at that view” if the “text of the Constitution is clear?”

Response: The Supreme Court is the final arbiter of the content and meaning of the text of the Constitution. If confirmed, as a U.S. District Judge I would be obligated by my oath of office and the doctrine of *stare decisis* to follow and apply the construction and interpretation of the Constitution’s text as determined by the Supreme Court.

- i. Do you disagree with those that call this an example of judicial activism?

Response: I believe it would not be my role as a U.S. District Judge to interject my view as to whether any Supreme Court

decision is or is not an example of judicial activism. This is particularly the case given the imprecision of the term, one which often means different things to different people. If confirmed, I would be obligated by my oath of office and the doctrine of *stare decisis* to follow and apply the *Roper* and *Kennedy* decisions.

- c. **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: If confirmed as a U.S. District Judge, I would be bound by Justice Kennedy’s analysis of the Eighth Amendment issue presented in the *Roper* decision.

- i. **Do you believe the evolving standards of decency are relevant to Constitutional interpretation of other phrases?**

Response: I believe evolving standards of decency are relevant to the interpretation of the Constitution’s text only if, and to the extent and in the manner in which, the Supreme Court has determined such standards are relevant to any particular issue of constitutional construction.

- ii. **What factors do you believe would be relevant to the judge’s analysis that the “evolving standards of decency” dictated that the death penalty is unconstitutional in all cases?**

Response: Under current Eighth Amendment jurisprudence, any determination by a lower court judicial officer that the death penalty is unconstitutional in all cases would be manifestly erroneous and would certainly be reversed. In these circumstances, evolving standards of decency would be wholly irrelevant to the legal analysis undertaken by a U.S. District Judge presented with this issue.

- iii. **If presented with a case of first impression, where there was no directly applicable precedent, how would you determine what the evolving standards of decency were?**

Response: While I cannot now know for certain, I expect that in the overwhelming number of cases which might be assigned to me if I am confirmed as a U.S. District Judge, evolving standards of decency will play no role. If, however, a case comes before me in which the closest applicable higher court precedent required consideration of such standards, I would follow the analytical framework established by that court. Cognizant my decision was

one of first impression, I would strive to limit the reach and scope of the decision as narrowly as possible to the specific parties and the actual issues presented to me for resolution. If appropriate, I would consider staying my decision to afford the party aggrieved by the decision an opportunity to seek resolution of the dispute by a reviewing court.

- 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, I do not. The Constitution is not constantly evolving as society interprets it. What does change and develop over time is the Supreme Court’s interpretation of the text of the Constitution. For example, in *Scott v. Sanford*, 60 U.S. 393 (1856), our federal Constitution was interpreted by the Supreme Court to exclude individuals of African ancestry from the status of “person” or “citizen,” as those terms are used in the Constitution. The Supreme Court has since construed the terms “person” and “citizen” in a very different manner, and in the process has repudiated its earlier holding in *Scott*.

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

Response: Yes.

- b. Why or why not?**

Response: In *Gonzáles v. Raich*, 545 U.S. 1 (2005), the Supreme Court rejected the argument that the *López* and *Morrison* cases had departed from prior Commerce Clause precedent. If confirmed as a U.S. District Judge, I would be bound by the Court’s ruling in *Gonzáles*.

- 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: I do not believe there is any federal court precedent which would permit a U.S. District Judge to rely on contemporary foreign or international laws or decisions in determining the meaning of the Constitution.

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

Response: Please see my response to Question 4.

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

Response: I believe that, if confirmed as a U.S. District Judge, I would be obligated by the oath of my office and the doctrine of *stare decisis* to consider, let alone rely upon, foreign laws, ideas or solutions only if, and to the extent and in the manner in which, Supreme Court precedent permits U.S. District Judges to do so.

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

Response: I would consider foreign law when interpreting the Eighth Amendment or any other amendment only if, and to the extent and in the manner in which, Supreme Court or Tenth Circuit precedent permits U.S. District Judges to do so.