

**Responses of Diana Saldaña**  
**Nominee to be United States District Judge for Southern District of Texas**  
**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 believe the Constitution is a living document that is constantly evolving as society interprets it.

- 2. Justice William Brennan once said: “Our Constitution was not intended to preserve a preexisting society but to make a new one, to put in place new principles that the prior political community had not sufficiently recognized.” Do you agree with him that constitutional interpretation today must take into account this supposed transformative purpose of the Constitution?**

Response: I am not familiar with this statement by Justice Brennan or the context in which it was made. If confirmed as a district judge, I would consider the text of the Constitution, the intent of the framers, and the precedent as established by the Supreme Court and the appeals courts to resolve constitutional questions.

- 3. Do you believe judicial doctrine rightly incorporates the evolving understandings of the Constitution forged through social movements, legislation, and historical practice?**

Response: I believe a district judge is guided by the text of the Constitution, the intent of the framers, and binding precedent from the Supreme Court and the appeals courts.

- 4. Do you believe empathy is an essential ingredient for arriving at just decisions and outcomes and should play a role in a judge’s consideration of a case?**

Response: No. The Court applies the law to the facts.

- 5. Is any transaction involving the exchange of money subject to Congress’s Commerce Clause power?**

Response: No. The Supreme Court has identified guidelines, and limitations, for determining the scope of Congress’ authority. United States v. Lopez, 514 U.S. 549 (1995), and United States v. Morrison, 529 U.S. 598 (2000). Should I be confirmed as a district judge, I will follow the Supreme Court’s analysis in these cases.

- 6. What limitations remain on the individual Second Amendment right now that it has been incorporated against the States?**

Response: The Supreme Court has left open the question of what limitations on the Second Amendment right remain except for those expressly identified.

- a. **Is it limited only to possession of a handgun for self-defense in the home, since both *Heller* and *McDonald* involved cases of handgun possession for self-defense in the home?**

Response: The Supreme Court has stated there is an individual right to bear arms. However, that right is not unlimited. The Supreme Court has not stated what those other limitations are.

7. **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 district judge, I would follow the Supreme Court’s holding and analysis in Roper in combination with other applicable Supreme Court and Fifth Circuit precedent.

- a. **Do you agree that the Constitution’s prohibition on cruel and unusual punishment “embodies a principle whose application is appropriately informed by our society’s understanding of cruelty and by what punishments have become unusual?”**

Response: If confirmed as a district judge, I would follow the law regarding imposition of the death penalty as directed by statute and binding precedent from the Supreme Court and the Court of Appeals for the Fifth Circuit.

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

Response: If confirmed as a district judge, I would follow the law regarding imposition of the death penalty as directed by statute and binding precedent from the Supreme Court and the Court of Appeals for the Fifth Circuit.

- 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: No. The Supreme Court has foreclosed any contention that the death penalty is unconstitutional in all cases. If confirmed as a district judge, I would follow that precedent.

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

Response: The relevant factors are those articulated by the Supreme Court and the Court of Appeals for the Fifth Circuit.

8. **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, unless the Supreme Court or the Court of Appeals for the Fifth Circuit directs otherwise.

- a. Is it appropriate for judges to look for foreign countries for “wise solutions” and “good ideas” to legal and constitutional problems?**

Response: No. I would only look to foreign law if the precedent of the Supreme Court or the Court of Appeals for the Fifth Circuit required me to do so.

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

Response: I cannot think of any circumstances in which I would consider foreign law to interpret the Constitution, unless the Supreme Court or the Court of Appeals for the Fifth Circuit said otherwise.

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

Response: No.

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

Response: No, unless directed to do so at some point in the future by the Supreme Court or the Court of Appeals for the Fifth Circuit.