

Responses of James E. Shadid
Nominee to be United States District Judge for the Central District of Illinois
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.

- 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 do not know what Justice Brennan meant, or in what context, he made that statement. I believe that when presented with a case that requires application of the Constitution to a specific factual situation, a district court judge is guided by the text of the Constitution and the precedent as established by the United States Supreme Court and the appeals courts.

- 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 court judge is guided by the text of the Constitution and the precedent as established by the United States 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.

- 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).

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 what limitations 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: I would follow the law regarding imposition of the death penalty as directed by statute and binding precedent from the Supreme Court and Seventh Circuit.

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: I would follow the law regarding imposition of the death penalty as directed by statute and binding precedent from the Supreme Court and Seventh Circuit.

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

Response: I would follow the law regarding imposition of the death penalty as directed by statute and binding precedent from the Supreme Court and Seventh 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.

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

Response: I would look to the standards as set out by the Supreme Court and the Seventh 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 consideration has been directed by statute or precedent from the Supreme Court or Seventh Circuit.

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

Response: No.

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

Response: I would do so only if consideration has been directed by statute or precedent from the Supreme Court or Seventh Circuit.

- 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