

Responses of Leonard P. Stark
Nominee to be United States District Judge for the District of Delaware
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* are consistent with the Supreme Court’s earlier Commerce Clause decisions?**

Response: Yes.

- b. Why or why not?**

Response: The Supreme Court stated in *Lopez* and *Morrison*, as well as in *Gonzales v. Raich*, 545 U.S. 1 (2005), that its decisions in these recent cases are consistent with its earlier Commerce Clause decisions.

- 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. As a Magistrate Judge—and if confirmed as a District Court Judge—my obligation is to follow the binding precedent of the Supreme Court and the Court of Appeals.

- a. Do you believe evolving standards of decency are relevant to a court’s evaluation of the text of the Constitution or Bill of Rights?**

Response: No, except to the extent that the binding precedent of the Supreme Court and the Court of Appeals requires otherwise.

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

Response: If, under the precedent of the Supreme Court or the Court of Appeals, I were required in a particular case to assess evolving standards of decency, I would do so in the manner set forth in the decisions of these higher courts.

- 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: The Supreme Court has held that the death penalty is constitutional. A judge could not find it unconstitutional in all cases.

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

Response: A judge should follow the precedent of the Supreme Court and the Court of Appeals.

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: No, except to the extent the binding precedent of the Supreme Court and the Court of Appeals requires otherwise.

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

Response: Only under circumstances in which the Supreme Court or the Court of Appeals has held that it is proper to do so.

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

Response: As a federal judge operating in the American justice system, my obligation is to apply and interpret the law of the United States, and in doing so I am bound to follow the law of the United States.

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

Response: No, except to the extent the binding precedent of the Supreme Court and the Court of Appeals requires otherwise.