

**Responses of Marc T. Treadwell
Nominee to the U.S. District Court for the Middle District of Georgia
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. 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. Generally speaking, are *Lopez* and *Morrison* consistent with the Supreme Court’s earlier Commerce Clause decisions?**

Response: In *Gonzales v. Raich*, 545 U.S. 1, 23 (2005), the Supreme Court held that *Lopez* and *Morrison* are consistent with prior Supreme Court Commerce Clause decisions.

- b. Why or why not?**

Response: In *Gonzales v. Raich*, the Supreme Court rejected the argument that *Lopez* and *Morrison* departed from prior Commerce Clause precedent. If confirmed as a district judge, I would be bound by the Court’s holding.

- 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: Justice Kennedy’s analysis in the majority opinion in *Roper v. Simmons* is controlling precedent and thus must be followed by federal district judges.

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

Response: If called upon to make that determination, I would apply controlling precedent.

- 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: I know of no controlling precedent that would support such a result. On the contrary, the Supreme Court has held that capital punishment is constitutional.

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

Response: For a district judge, the relevant factors would be determined by controlling precedent.

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.

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

Response: See above.

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

Response: I know of no basis for considering foreign law when interpreting the Eighth Amendment or any other amendment to the United States Constitution and I would not consider foreign law.