

Responses of Brian J. Davis
Nominee to be United States District Judge for the Middle District of Florida
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

- a. If not, please explain.**

Response: The Constitution is not subject to change except by amendment and ratification as specified in Article V.

- 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: No

- a. Please explain.**

Response: The Constitution should be interpreted according to its text and the authoritative decisions of the United States Supreme Court and the 11th Circuit Court of Appeals.

- 3. In Federalist Paper 45, James Madison wrote: “The powers delegated by the proposed Constitution to the Federal Government are few and defined. Those which are to remain in the State Governments are numerous and infinite.” Do you agree with Madison that the powers of the Congress are fundamentally limited?**

Response: Yes

- 4. In your view, is it ever proper for judges to rely on 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: While foreign or international laws may be relevant to issues of conflicts of law and treaty interpretation, there are no instances in which they may be used to interpret the United States Constitution except for any United States Supreme Court precedent that requires doing so.

5. In a speech, you stated: “Universal education is necessary and the elimination of the extremes of wealth and poverty of our world is a good to be sought.”¹ While we all agree eliminating extreme poverty is a noble goal, is it not antithetical to a capitalist system to strive to eliminate “extreme wealth”?

Response: Yes

a. What did you mean by this statement?

Response: I agree that in a capitalist system those who are successful are entitled to enjoy the financial rewards of their success. My intention in making this statement was not to question this principle; rather, I meant to focus on the relative disparity between the very rich and the very poor and advocate for the elimination of that disparity by improving the lives of those in poverty through education.

¹ Davis Senate Attachments, page 2537.