

Responses of Kathleen Williams
Nominee to be United States District Judge for the Southern 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.

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 agree with Justice Brennan’s comments as a paradigm for constitutional interpretation.

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 that judicial decisions are based on the Constitution, statutes passed by Congress, and binding precedent of the Supreme Court and the circuit 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, I do not believe that empathy has a role in judicial decision-making.

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

Response: No. The Supreme Court has identified certain limitations to the exercise of Commerce Clause power in *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 recognized an individual’s right to bear arms. However, the Supreme Court has not determined what limitations remain, although certain limitations are acknowledged in *District of Columbia v. Heller*, 554 U.S. 570, 128 S. Ct. 2783 (2008) and *McDonald v. City of Chicago, Ill.*, 130 S. Ct. 3020 (2010).

- 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: While the Supreme Court has ruled that an individual has the right to bear arms, the Court noted that its decision “does not imperil every law regulating firearms” (*McDonald* at 3047). The Court has not definitively set forth what limitations remain, although some are referenced in *Heller* and *McDonald*.

- 7. In 2005, you gave remarks to the Federal Bar Association and said: “Interestingly, while we don’t seem to have a problem using foreign nations to park people, there are those who do have a problem using foreign law to inform debates here, especially with regard to the death penalty.” Do you believe judges should look to foreign law in making their decisions and forming their opinions?**

Response: No.

- 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 not consider foreign law when interpreting the Constitution.

- c. 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 district court judge. I would adhere to the Supreme Court’s decision in *Roper* and all applicable 11th Circuit precedent.

- d. 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 court judge, I would follow the law regarding the death penalty as set forth statutorily and in the binding precedents of the Supreme Court and the 11th Circuit Court of Appeals.

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

Response: If confirmed as a district court judge, I would follow the law regarding

the death penalty as set forth statutorily and in the binding precedents of the Supreme Court and the 11th Circuit Court of Appeals.

- f. 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 affirmed the constitutionality of the death penalty.

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

Response: The relevant factors are those set forth by the Supreme Court and the 11th Circuit Court of Appeals.