

**Responses of Carlton W. Reeves  
Nominee to be United States District Judge for the Southern District of Mississippi  
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 Constitution is a document that is circumscribed by its text and deference must be accorded to its text. The Constitution can only be changed through the amendment process.

- 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.

- 3. Do you believe judicial doctrine rightly incorporates the “evolving understandings of the Constitution forged through social movements, legislation, and historical practice”?**

Response: No. I believe that judicial doctrine is governed stare decisis.

- 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. Empathy should play no role in a judge’s consideration of a case.

- 5. 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* consistent with the Supreme Court’s earlier Commerce Clause decisions?**

Response: Yes.

- b. Why or why not?**

Response: In *Gonzalez v. Raich*, 545 U.S. 1, 23 (2005), the Supreme Court held that *Lopez* and *Morrison* preserved the “larger context of modern-era Commerce Clause jurisprudence.”

6. **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 concurring opinion provides the controlling precedent in this case. My personal views do not matter as all district judges are bound by the decisions of the United States Supreme Court, and if confirmed, I will follow Supreme Court precedent.

- 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: My understanding of Supreme Court precedent is that *Roper v. Simmons*, 543 U.S. 551, 560 (2005) states that “[t]he prohibition against ‘cruel and unusual punishments,’ like other expansive language in the Constitution must be interpreted according to its text, by considering history, tradition and precedent, and with due regard for the its purpose and function in the constitutional design.”

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

Response: As a district judge, if confirmed, I would be bound by the law and the facts presented before me as well as the precedent of the United States Supreme Court and the Fifth Circuit Court of Appeals.

- 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. The United States Supreme Court has declared that capital punishments is a constitutionally sanctioned punishment in many circumstances.

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

Response: The only factors that must be relevant to a district judge’s analysis are those dictated by the United States Supreme Court and the Fifth Circuit Court of Appeals.

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

Response: As a district judge, it is only appropriate if required under the precedent of the United States Supreme Court and the Fifth Circuit Court of Appeals.

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

Response: The only instance in which I would consider foreign law when interpreting the Constitution is if United States Supreme Court precedent or precedent of the Fifth Circuit Court of Appeals dictates that I must consider foreign law when interpreting the Constitution.

- 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, unless United States Supreme Court precedent or precedent of the Fifth Circuit Court of Appeals dictates otherwise.

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

Response: No, unless United States Supreme Court precedent or precedent of the Fifth Circuit Court of Appeals dictates otherwise.

8. **As you noted in your testimony, the Magnolia Bar Association has a storied history and the noble goal of striving for justice for all Mississippians. In 2007, in your capacity as President of the Magnolia Bar Association, you wrote a letter of opposition to President Bush’s nomination of Leslie Southwick to the Court of Appeals for the Fifth Circuit. In that letter, you stated that your reason for opposing him was that his nomination continued “a stark pattern of racial discrimination and racial exclusion in appointments by President Bush to the Fifth Circuit and to the federal judiciary from Mississippi ... [and] Judge Southwick’s record as a state court of appeals judge in Mississippi suggests that he is not the right person for the Fifth Circuit Court of Appeals at this time in our history, and that his presence there could lead to an improperly narrow interpretation of the constitution and the civil rights laws.”**

**You also said you “question whether Judge Southwick will properly enforce the law when it comes to the rights of those who are unpopular and who are marginalized by the political process.” You continued that you hoped President Bush would “reconsider and perhaps nominate someone who [would] add to the Fifth Circuit’s stature, diversity, and sensitivity to the need to enforce fully the civil rights laws.”**

- a. Judge Southwick was confirmed to the Fifth Circuit by a bipartisan vote of 59-38. Do you believe his presence on the Fifth Circuit has lead to an “improperly narrow interpretation of the constitution and the civil rights laws?”**

Response: No.

- b. Do you believe Judge Southwick has “properly enforce[d] the law when it comes to the rights of those who are unpopular and who are marginalized by the political process?”**

Response: Yes.

- c. Do you believe Judge Southwick has added to the “stature” of the Fifth Circuit during his almost three years on the court?**

Response: Yes.

- d. Do you believe he should have been confirmed to the Fifth Circuit?**

Response: No.

- e. Do you stand by your earlier statements?**

Response: Yes.

- f. If you are confirmed to the District Court for the Southern District of Mississippi and a case you decide is appealed, Judge Southwick could sit on the three-judge panel that reviews your decision. Given your strong criticism of his nomination, what assurances can you give the Senate that you will accept the legitimacy of a ruling that he authors or with which he concurs if a majority the panel comes to a different conclusion in a case than you did?**

Response: I have great respect for Judge Southwick. I will follow and respect the precedent of the Fifth Circuit Court of Appeals, no matter the authors or members of the panel.

**9. In the 2007 letter, you claimed “the Senate and its judiciary committee must ensure that the nominations do not form a pattern that is racially discriminatory in purpose or effect.”**

**a. Do you believe this committee could properly reject a nominee because it believes that nominee was chosen because of his or her race?**

Response: The United States Senate has the Constitutional role and duty of providing advice and consent to the President on his judicial nominations, and I believe the Senate can reject a nominee for any reason.

**b. Is it your contention that the United State Senate could properly vote to reject an otherwise qualified judicial nominee, if that nominee’s race would create or continue a perceived racial imbalance on a court?**

Response: Yes. The advice and consent clause of the Constitution does not restrict the Senate’s reasoning in performing this function.

**i. If not, then why did your letter state “we ask that you not approve this nomination [of Mr. Southwick], but instead allow President Bush to reconsider and perhaps nominate someone who will add to the Fifth Circuit’s statute, diversity, and sensitivity to the need to enforce fully the Civil Rights Laws”? Please explain your statement.**

Response: Not applicable.

**10. In that same letter, you said the Fifth Circuit has applied a “narrow and overly technical interpretation of the constitution and the civil rights law.” Please list all the cases issued by the Fifth Circuit, either *en banc* or by a three-judge panel, that you believe applied a “narrow and overly technical interpretation of the constitution and the civil rights law” and explain why you believe they were “narrow and overly technical.”**

Response: As a candidate for a district judgeship in the Fifth Circuit, I believe it would be disrespectful and inappropriate for me to criticize that court’s recent decisions. If confirmed, my personal views will not play a role in my jurisprudence. I will follow Fifth Circuit precedent and the precedent of the United States Supreme Court.

**11. At your hearing, when asked about the importance of racial diversity on the federal bench, you said it is “extraordinarily important that the judiciary reflects the population in the states,” that “[p]eople need to see that they have a chance,” and “people need to believe ... that [judges] can administer justice and that they will obey and respect the rule of law.”**

- a. **Do you believe the courts should contain a percentage of minority judges that are proportionate to the percentage of minorities in the community?**

Response: No.

- b. **Do you believe presidents should employ affirmative action principles in the selection of federal judges?**

Response: I believe that the President, as the holder of the Constitutional authority to nominate federal judges may employ whatever criteria he or she desires in selecting persons whose nominations are then forwarded to the United States Senate for its consideration.

- c. **Do you believe there is a relationship between a judge's race and the legitimacy of his rulings?**

Response: No.

- d. **Do you believe there is a relationship between a judge's race and the *perceived* legitimacy of his rulings?**

Response: No.

- e. **If justice is blind, why do you think people doubt that they "have a chance" in court if a non-minority judge is deciding their case?**

Response: I do not think that people doubt that they "have a chance" if a non-minority judge is deciding their case.

- f. **Do you personally believe people do not "have a chance" in court if a non-minority judge is deciding their case?**

Response: No.

- g. **Why do you think people doubt that a non-minority judge would "obey and respect the rule of law" to the same extent that a minority judge would?**

Response: I do not think that people doubt that a non-minority judge would "obey and respect the rule of law" to the same extent that a minority judge would.

- h. **Do you believe non-minority judges will not "obey and respect the rule of law" to the same extent that a minority judge will?**

Response: No.

- i. If confirmed, would your race, the race of the parties or the lawyers before you, or any racially sensitive evidence or arguments play a role in your judicial decision-making? If so, how?**

Response: No.

- j. What exactly did you mean by these statements?**

Response: My statement was intended to mean that I believe that minority judges can serve as role models to the public at-large and particularly members of the minority community who share the same race or sex, and have the opportunity to inspire minority members of the community to believe that they too could “have the chance” to sit on the federal bench.