

Questions for the Record
Senate Judiciary Committee
Senator Thom Tillis

Questions for Judge Paul Lewis Abrams

1. **Some individuals have argued that the United States Constitution is a “living document,” subject to different interpretations as society changes. Do you subscribe to this point of view?**

Response: I do not believe that the words or meaning of the Constitution should be changed even as society changes, except by amendment. Rather, the document is such that it can be applied to new situations as they arise, applying the Constitution’s plain language. All cases that I have handled during 14 years as a magistrate judge have been decided by applying legal precedent as established by the United States Supreme Court and the Ninth Circuit Court of Appeals. If fortunate enough to be confirmed as a District Judge, I would continue to apply legal precedent to all cases.

2. **What role, if any, should societal pressure or popular opinion play in interpreting statutes or the United States Constitution?**

Response: Societal pressure or popular opinion play no role in interpreting statutes or the United States Constitution.

3. **Please define judicial activism. Is judicial activism ever appropriate?**

Response: If judicial activism means to incorporate a judge’s personal attitudes or opinions into the resolution of cases, then it is never appropriate.

4. **When, if ever, is it appropriate for a federal court to rule that a statute is unconstitutional?**

Response: Statutes are presumed to be constitutional, and a judge should avoid ruling otherwise if at all possible. A statute should be declared unconstitutional only in the rare circumstance where Congress has clearly exceeded its authority in passing the law, or if it violates the constitutional rights of our citizens.

5. **What is a fundamental right? From where are these rights derived?**

Response: Fundamental rights, which derive from the Due Process Clause of the U.S. Constitution, are those “fundamental rights and liberties which are, objectively, ‘deeply rooted in this Nation’s history and tradition,’” and that are “‘implicit in the concept of ordered liberty,’ such that ‘neither liberty nor justice would exist if they were sacrificed.’” *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (internal citations omitted).

- 6. Do you believe the First Amendment or any other provision of the United States Constitution protects private citizens and businesses from being required to perform services that violate their sincerely held religious beliefs?**

Response: The Supreme Court has invalidated laws under the First Amendment that have infringed upon sincerely held religious beliefs. *See Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993). In addition, the Religious Freedom Restoration Act provides statutory protections for sincerely held religious beliefs. *See Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014). If confronted with a case regarding the scope of protections afforded to religious beliefs, I would continue to follow all Supreme Court and Ninth Circuit precedent.

- 7. What level of scrutiny is constitutionally required when a statute or regulation related to firearms is challenged under the Second Amendment of the United States Constitution?**

Response: As the Ninth Circuit has recently noted, the Supreme Court has not dictated a specific standard of scrutiny for Second Amendment challenges. *Teixeira v. Cty. of Alameda*, No. 13-17132, 2016 WL 2849245, at *9 (9th Cir. May 16, 2016) (citing *District of Columbia v. Heller*, 554 U.S. 570, 628-29 (2008), *McDonald v. City of Chicago*, 561 U.S. 742 (2010)). The Ninth Circuit uses a two part test to determine the appropriate level of scrutiny: “(1) how close the law comes to the core of the Second Amendment right and (2) the severity of the law’s burden on the right.” *Id.* (quoting *Jackson v. City and Cnty. of S.F.*, 746 F.3d 953, 960 (9th Cir. 2014)). “Intermediate scrutiny is appropriate if the regulation at issue does not implicate the core Second Amendment right *or* does not place a substantial burden on that right.” *Fyock v. Sunnyvale*, 779 F.3d 991, 998-999 (9th Cir. 2015). If confirmed, I would continue to strictly follow all binding precedent.

- 8. Do you believe it is constitutional for states to require voters to show photo identification before being eligible to cast their vote?**

Response: The Supreme Court in *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008), upheld the state of Indiana's statute requiring government-issued photo identification to vote on the basis that the state's interests identified as justification for the statute (*e.g.*, deterring voter fraud, improving election procedures) were sufficiently weighty to justify any limitation imposed on voters. The Supreme Court decision is binding precedent that I would apply if confronted with such an issue, as I have applied all such precedents in my role as a magistrate judge.

- 9. One challenge you will face as a federal judge is managing a demanding caseload. If confirmed, how will you balance competing priorities of judicial efficiency and due process to all litigants involved in the cases on your docket? Will you give certain cases priority over others? If so, please describe the process you will use to make these decisions.**

Response: As a magistrate judge, I handle a caseload that at any given time includes scores of writs for habeas corpus, social security appeals, civil rights matters, discovery disputes and settlement conferences. I also regularly handle all manner of civil cases with the consent of the parties, which can include jury trials. I have learned over the last 14 years how to manage a large caseload, how to prioritize my calendar so that all cases are efficiently and timely resolved, and how to give my full attention to each matter so that all litigants are provided with due process. I have a system in place in my chambers to ensure that matters that are ready for resolution are promptly resolved, that deadlines are met by the parties so that cases can proceed forward, and that nothing slips through the cracks. While, if confirmed, I would also have a significant criminal caseload that would be subject to the Speedy Trial Act, I am confident that the system I have established would enable me to continue to provide due process to all litigants in a prompt and equal manner.

- 10. Do you believe the death penalty is constitutional? Would you have a problem imposing the death penalty?**

Response: The Supreme Court has clearly held that the death penalty is constitutional. *Gregg v. Georgia*, 428 U.S. 153 (1976). *See also Glossip v. Gross*, 135 S. Ct. 2726, 2732-33 (2015) (noting that "it is settled that capital punishment is constitutional"). If confirmed, I would continue to faithfully apply all Supreme Court precedent, including in the implementation of the death penalty.