

Questions for the Record
Senate Committee on the Judiciary
Senator Thom Tillis

Questions for Mr. James Wesley Hendrix

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: No.

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

Response: None.

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

Response: Judicial activism is when a judge decides a case or resolves an issue based on his or her personal views or policy preferences instead of applying the applicable law. Judicial activism is not appropriate.

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

Response: Federal courts should rarely conclude that a statute is unconstitutional. Statutes are presumed to be constitutional, and courts should, when possible, resolve cases in a way that avoids findings of unconstitutionality. Nevertheless, where there is no alternative basis to resolve the case and Congress exceeded its authority or the statute violates the Constitution, courts must conclude that a statute is unconstitutional.

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

Response: As explained by the Supreme Court, the Due Process Clause “protects those fundamental rights and liberties which are, objectively, deeply rooted in this Nation’s history and tradition and 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 quotation marks and 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 First Amendment protects the free exercise of sincerely held religious beliefs. The Supreme Court has provided guidance on how to resolve a claim that a law or regulation infringes religious rights, and I would faithfully apply that precedent. *See, e.g., Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 532 (1993) (explaining that “[a]t a minimum, the protections of the Free Exercise Clause pertain if the law at issue discriminates against some or all religious beliefs or regulates or prohibits conduct because it is undertaken for religious reasons”); *see also Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014) (explaining that private citizens and businesses shall not be substantially burdened in their exercise of sincerely held religious beliefs under the Religious Freedom Restoration Act).

- 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: Although the Supreme Court has not specified what level of scrutiny applies when a statute or regulation related to firearms is challenged under the Second Amendment, it has made clear that the scrutiny is higher than rational-basis review. *See District of Columbia v. Heller*, 554 U.S. 570, 628 n.27 (2008). The Fifth Circuit has held that “[a] regulation that threatens a right at the core of the Second Amendment—for example, the right of a law-abiding, responsible adult to possess and use a handgun to defend his or her home and family—triggers strict scrutiny.” *National Rifle Ass’n of America, Inc. v. Bureau of Alcohol, Tobacco, Firearms, and Explosives*, 700 F.3d 185, 195 (5th Cir. 2012) (internal citation omitted). For “[a] less severe regulation—a regulation that does not encroach on the core of the Second Amendment,” there is “a less demanding means-ends showing” that “requires the government to demonstrate a ‘reasonable fit’ between the challenged regulation and an ‘important’ government objective.” *Id.* If confirmed as a district court judge, I would be bound by and faithfully apply Fifth Circuit and Supreme Court 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: Supreme Court precedent provides guidance on how to determine whether a statute or regulation affecting voting rights is unconstitutional, and the Fifth Circuit recently addressed the issue. *See Crawford v. Marion*

County Election Bd., 553 U.S. 181 (2008); *Veasey v. Abbott*, __ F.3d __, 2016 WL 3923868 (5th Cir. July 20, 2016) (en banc). As a district court judge, I would be bound by and faithfully apply Supreme Court and Fifth Circuit precedent.

- 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: If confirmed, it would be my responsibility as a judge to ensure that all litigants are afforded due process. I would balance that obligation with the need for judicial efficiency by employing a diligent work ethic and active case-management practices, and I would make myself available to parties to resolve pretrial disputes. Other than prioritizing criminal cases as required by the Speedy Trial Act, I would process and resolve cases as they arrived.

To help cases proceed efficiently, I would conduct pretrial conferences, issue and enforce reasonable scheduling orders, and issue rulings as promptly as possible. I would utilize applicable rules designed to assist the parties and the court avoid unnecessary delay and cost, including Federal Rules of Civil Procedure 16 and 26(f), and the Northern District of Texas's local rules. Additionally, I would utilize magistrate judges to help process cases and resolve disputes. Finally, if confirmed, I would meet with other district court judges and the clerk of court to ensure that I employ best practices in case management.

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

Response: The Supreme Court has held that, except for minors and the intellectually disabled, the death penalty is constitutional. If confirmed as a district court judge, I would be bound by and faithfully apply Supreme Court and Fifth Circuit precedent.