

Questions for the Record
Senate Judiciary Committee
Senator Thom Tillis

Questions for Mr. Claude John Kelly III

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 subscribe to the theory of a living Constitution. Constitutional issues should be decided by looking to the text of the Constitution and applying binding Supreme Court and Circuit precedent.

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 should play no role in interpreting statutes or the United States Constitution. If confirmed as a judge, I would always follow the plain language of the statute and apply binding precedent of the Supreme Court and Fifth Circuit.

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

Response: Judicial activism is the exercise of judicial duties with an agenda. It is result driven notwithstanding binding precedent from superior courts. I do not feel it is ever appropriate.

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

Response: Statutes enacted by Congress are presumptively constitutional. Constitutionality should only be addressed if it is necessary to the disposition of the case and then, only narrowly. A federal statute should not be declared unconstitutional unless it violates the Constitution or exceeds congressional authority.

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

Response: Fundamental Rights have been defined as “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 citations omitted). If confirmed as a judge, I would apply all governing Supreme Court and Fifth Circuit precedent for purposes of evaluating fundamental rights.

- 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: In *Locke v. Davey*, 540 U.S. 712, 718 (2004) the Supreme Court recognized that: “The Religion Clauses of the First Amendment provide: ‘Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.’” The Court recognized that “the Establishment Clause and the Free Exercise Clause are frequently in tension [but that] ‘there is room for play in the joints.’” *Id.* (internal citation omitted). *See also Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993) addressing First Amendment protection for religious beliefs. I would apply this and all applicable Supreme Court and Fifth Circuit precedent to any case presenting a question of citizens being required to provide services that violate their sincerely held religious beliefs.

- 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: The Supreme Court held that the Second Amendment “guarantee[s] the individual right to possess and carry weapons in case of confrontation,” and that it therefore protects the right to keep and bear arms for the purpose of self-defense in the home. *District of Columbia v. Heller*, 554 U.S. 570, 592 (2008); *see also McDonald v. City of Chicago*, 561 U.S. 742, 749-50 (2010). The Court declined to establish a clear level of scrutiny. The Fifth Circuit has held that “[i]f the law burdens conduct that falls within the Second Amendment’s scope, we then proceed to apply the appropriate level of mean-ends scrutiny. We agree with the prevailing view that the appropriate level of scrutiny depends on the nature of the conduct being regulated and the degree to which the challenged law burdens the right.” *Nat. Rifle Ass’n of America, Inc. v. McCraw*, 719 F. 3d 338, 346-47 (5th Cir. 2013) (internal quotation and citation omitted). I would always follow the guidance of the Supreme Court and the Fifth Circuit if I am fortunate enough to be confirmed.

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

Response: In *Crawford v. Marion County (Indiana) Election Board*, 553 U.S. 181, 204 (2008), the Supreme Court held that Indiana's interests for its voter identification law were neutral and sufficiently strong to reject the facial attack to the statute and that the application of the statute was "amply justified by the valid interest in protecting 'the integrity and reliability of the electoral process.'" (internal citation omitted). I will follow this and all Supreme Court and Fifth Circuit precedent if confirmed as a 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: If confirmed as a judge, I will make use of all case management tools available in the Eastern District of Louisiana. I will take an active role in scheduling and will hold conferences with lawyers whenever needed. I will set realistic and firm timetables and encourage resolution wherever appropriate. I will also consult with magistrate judges to manage my docket. I will set definite and reasonable trial schedules and issue decisions promptly.

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

Response: The United States Supreme Court has held that the death penalty is constitutional. If confirmed as a judge, I will follow this and all precedent of the Supreme Court.