

Questions for the Record
Senate Judiciary Committee
Senator Thom Tillis

Questions for Mr. Winfield Denton Ong

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. Our Founding Fathers provided us a Constitution that establishes a form of government and provides a specific set of rules, principles and values for the country to be governed by at all times. It is a judge’s job to understand whether the issues before him comport with the Constitution, not how to bend the Constitution to the issues of the day.

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

Response: None. On the contrary, a central point of a Constitution is to establish a set of fundamental principles and values that govern society at all times irrespective of the public mood at any particular time. That is unequivocally the role of the Constitution in our system of government.

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

Response: In my view, judicial activism is when a judge allows their personal views to affect their ruling. A judge should never let their personal views affect their rulings. I judge should scrupulously endeavor to apply precedent and the most restrained, reasoned and balanced analysis to the issues before them.

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

Response: It would be the extremely rare situation for a trial court to declare a Congressional statute unconstitutional. All statutes are presumptively constitutional. However, it is the role of the federal courts to see that all laws comport with constitutional principles. There is extensive Supreme Court case law on how a court should evaluate whether a statute violates constitutional principles, and I would follow that case law.

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

Response: Fundamental rights in our country are derived from the Constitution. The Supreme Court has provided a set of tests to identify when a fundamental right is implicated. *See, e.g., Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997).

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 constitutional right to free exercise of religion is one of the most fundamental rights in the Constitution. On rare occasions that right can conflict with other fundamental rights. In that instance, the Supreme Court has provided guidance regarding how the First Amendment guarantee of free exercise of religion is to be protected. If confirmed I would follow those precedents faithfully. *See, e.g., Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993).

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: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. City of Chicago*, 561 U.S. 742 (2008), the Supreme Court established the right to bear arms as a fundamental right that applies to the states as well as to federal enclaves. However, the Court did not explicitly establish a single level of scrutiny to be applied by courts in all cases when evaluating laws that restrict the right to bear arms. Also refraining from establishing a single level of scrutiny to be applied in all cases, the Seventh Circuit Court of Appeals has addressed this issue in some detail in *Moore v. Madigan*, 702 F.3d 933 (7th Cir. 2012), and *Friedman v. City of Highland Park*, 784 F.3d 406 (7th Cir. 2015). If confirmed I would scrupulously follow the precedents of the Supreme Court, and the Seventh Circuit Court of Appeals.

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 has provided tests for determining when a statute or regulation that affects the right to vote is unconstitutional. If confirmed I would faithfully follow those precedents. *See, e.g., Crawford v. Marion County Election Board*, 553 U.S. 181 (2008).

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: In managing my caseload I would set a status conference at the earliest opportunity to discuss the anticipated course of the litigation with the parties, establishing scheduling orders, status conferences and deadlines, and generally emphasizing my interest in seeing the case move along promptly. I would rely on magistrate judges to manage the discovery schedule, consulting with the magistrate judges regularly. Cases involving the Speedy Trial Act must almost always take priority over others. I anticipate setting a tone for professionalism and promptness in how the work of my court is handled by providing guidance and direction at regular staff meetings.

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

Response: The Supreme Court has affirmed the constitutionality of the death penalty. *See, e.g., Glossip v. Gross*, 135 S. Ct. 2726 (2015). I would faithfully follow the law in all respects and would have no problem doing so.