

Senator Tillis
Questions for the Record

Karen Gren Scholer,
Nominee, U.S. District Judge for the Eastern District of Texas

- 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.

- 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: My understanding of judicial activism is when judges allow their personal views to guide their decisions, rather than a strict adherence to binding precedent. Judicial activism is never appropriate.

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

Response: Rarely. Statutes enacted by Congress are presumed to be constitutional, unless Congress has clearly exceeded its authority under the Constitution in enacting the statute or the statute violates a constitutional provision. Where a reasonable interpretation can be given to a statute to avoid declaring it unconstitutional, that interpretation should be employed.

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

Response: Fundamental rights are derived from the United States Constitution. They are rights 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, 720-721 (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: In *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 523 (1993), the Supreme Court recognized that the government may not enact laws that suppress religious belief or practice. The Supreme Court has provided guidance on the protection of the First Amendment right to free exercise of sincerely held religious beliefs, and if confirmed as a district judge, I will faithfully follow the binding precedents of the United States Supreme Court and the Fifth Circuit.

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), the Supreme Court held that the Second Amendment protects an individual's right to possess a firearm for traditionally lawful purposes, such as self-defense within the home. However, it did not establish a clear level of scrutiny to be applied by all courts in all cases in a challenge to a statute or regulation involving a firearm. In *Nat. Rifle Ass'n of America, Inc. v. McCraw*, 719 F.3d 338 (5th Cir. 2013), the Fifth Circuit held that the appropriate level of scrutiny to apply is dependent on the nature of the conduct being regulated and the degree to which the challenged law burdens the Second Amendment right. If confirmed as a district judge, I will faithfully follow the binding precedents of the United States Supreme Court and the Fifth Circuit.

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 United States Supreme Court in *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008) and the United States Court of Appeals for the Fifth Circuit in *Veasey v. Abbott*, No. 14-41127, 2016 WL 3923868 (5th Cir. July 20, 2016) have addressed the constitutionality of states requiring voters to show photo identification to vote. If confirmed as a district judge, I will faithfully follow the binding precedents of the United States Supreme Court and the Fifth Circuit.

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 intention "to secure the just, speedy and inexpensive determination of every action and proceeding," set forth in Fed. R. Civ. P. 1 (as amended December 1, 2015). I would engage in early and active case management. I would require the parties to propose a reasonable scheduling order, considering the specific needs of the case, and I would hold them to the ordered deadlines, barring good

cause to extend them. I would also utilize magistrate judges and encourage early alternative dispute resolution if appropriate for the case. I would necessarily give priority to cases that are subject to the Speedy Trial Act. I would also give priority to cases involving emergency injunctive relief.

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, I would follow this binding precedent.