

**Senator Cruz Questions for the Record (Second Round):**  
**Nomination Hearing for Wilhelmina Marie Wright, Wednesday, July 22, 2015**

**Responses of Justice Wilhelmina M. Wright**  
**Nominee, United States District Court for the District of Minnesota**

**I. Follow-Up Questions Regarding the U.S. Constitution and Private Property Rights**

- In my first round of questions for the record,<sup>1</sup> I asked you about opinions you expressed in a previously published law journal article.<sup>2</sup> Your opinions raise important questions about your view of the U.S. Constitution generally and its impact on private property rights specifically. You provided the following answers to my original questions:
  - o When asked about your published materials, you stated that “[t]his writing was an assignment as part of a class in which I was enrolled,” and “I do not recall the precise class assignment or question to which this reflection responded.”

**1. Do the opinions you expressed in your published materials reflect your views on the nature and basis of private property today?**

Response: No. The opinions expressed in the published materials to which you refer do not reflect my views on the nature and basis of private property. Moreover, if confirmed as a United States District Judge, I would adhere to the precedent of the United States Supreme Court and the Eighth Circuit.

- o When asked whether you believe the United States Constitution establishes positive rights, you stated that “[t]he United States Constitution *generally* enumerates negative rights establishing that which the government must not do rather than affirmative duties that the government must perform” (emphasis added).
- 2. Given your position that the United States Constitution “generally” enumerates negative rights, can you please provide specific examples of the positive rights you believe the Constitution establishes or guarantees.**

Response: In *DeShaney v. Winnebago Cnty. Dep’t of Soc. Servs.*, 489 U.S. 189, 196 (1989), the United States Supreme Court stated that “the Due Process Clauses generally confer no affirmative right to governmental aid, even where aid may be necessary to secure life, liberty or property interests of which the government may not deprive the individual.” I am not aware of any United States Supreme Court precedent that specifically articulates positive rights that the United States Constitution establishes or guarantees. If confirmed as a United States District Judge, I will faithfully follow all binding precedent from the United States Supreme Court and the Eighth Circuit.

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<sup>1</sup> My original questions and your original responses are incorporated by reference.

<sup>2</sup> See generally Derrick Bell, Tracy Higgins, and Sung-Hee Suh, *Racial Reflections: Dialogues in the Direction of Liberation*, 37 UCLA L.Rev. 1037, 1053-1054 (1989-1990).

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- 3. Do you think the Supreme Court of the United States has the authority to establish positive rights, via case law, based upon the language of the United States Constitution?**

Response: The source of our constitutional rights is the United States Constitution. I am not aware of any case in which the United States Supreme Court has established positive rights based on the language of the United States Constitution.

- o When asked about the private property protections provided by the United States Constitution beyond those in the Fifth Amendment, you acknowledged that “arguments have been advanced that *other provisions* of the United States Constitution provide other degrees of private property protection” (emphasis added).

- 4. Based upon the above statement, please indicate the “other provisions” of the United States Constitution that arguably provide private property protection.**

Response: In my original response, I noted that “[t]he Fifth Amendment provides a clear example of private property protection. Although arguments have been advanced that other provisions of the United States Constitution provide other degrees of private property protection, experience has taught me that I should not judge a case or argument presented until I have fully researched and considered all of its issues.”

Certain clauses of the United States Constitution expressly address rights that relate to private property protections. For example, Article I, section 10, provides that no State shall pass any law “impairing the obligation of contracts,” and many contracts have some nexus to private property. The Third Amendment states that “[n]o soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.”

Although I cannot predict every circumstance in which issues of private property protection under the United States Constitution may be presented in a case, if confirmed as a United States District Judge, I will carefully consider the arguments presented and faithfully follow the legal precedents of the United States Supreme Court and the Eighth Circuit and apply them to the particular facts of the case.

- 5. Based upon the above statement, do you agree with any of these “arguments”?**

Response: Although I acknowledge such arguments may be presented, I cannot predict the facts and circumstances of cases in which issues of private property protections of the United States Constitution may be presented to me or the specific arguments that will be raised. If confirmed as a United States District Judge, I will carefully consider the arguments presented and faithfully follow the legal precedents of the United States Supreme Court and the Eighth Circuit.

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- o When asked if you think the United States Constitution provides a right to federally subsidized housing, you stated that you were “not aware of any Supreme Court precedent interpreting the United States Constitution to provide a substantive right to subsidized housing.”

**6. Based on your current reading of the United States Constitution, do you think there is a constitutional right to federally subsidized housing?**

Response: No. The text of the United States Constitution does not articulate such a right, and I am not aware of any case in which the United States Supreme Court has determined that such a right exists.

- o When asked if you think the concept of private property ownership is inherently racist, you stated that “it was not my intent to convey in my writing that the concept of private property ownership is inherently racist,” but you then go on to imply that the existence of the Fair Housing Act is the reason why private property ownership is not inherently racist.

**7. Based on the above statement, do you think that, in the absence of the existence of the Fair Housing Act, private property ownership would be “inherently racist” in the United States?**

Response: No. My response to this question in the earlier Questions for the Record was not intended to imply that without the Fair Housing Act, private property ownership would be “inherently racist” in the United States.

- o In your published materials, you also appear to take issue with the “notion that property is neutral, that the deed to a suburban home is ‘property’ while the opportunity to move out of a slum is not.”

**8. Do you think the United States Constitution guarantees a right to own property?**

Response: No. The text of the United States Constitution does not articulate such a right, and I am not aware of any case in which the United States Supreme Court has determined that such a right exists.

**9. Do you think the United States Constitution guarantees a right to any type of housing?**

Response: No. The text of the United States Constitution does not articulate such a right, and I am not aware of any case in which the United States Supreme Court has determined that such a right exists.

**10. Do you think the United States Constitution guarantees a right to relocate one’s residence or domicile to a place of one’s choosing, regardless of financial means or resources?**

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Response: No. The text of the United States Constitution does not articulate such a right, and I am not aware of any case in which the United States Supreme Court has determined that such a right exists.

**11. Do you think the ability to “move out of a slum” is a property right?**

Response: No. The text of the United States Constitution does not articulate such a right, and I am not aware of any case in which the United States Supreme Court has determined that such a right exists.