

**Senator Grassley
Questions for the Record**

**Wilhelmina Marie Wright
Nominee, U.S. District Judge for the District of Minnesota**

- 1. A lot of factors go into sentencing defendants, including prior criminal history and type of crime. Generally, what role should other factors play in deciding a sentence? And specifically, what weight would you give to a defendant who has children at home, who is a small business owner, or who is active in a local church?**

Response: A district court judge shall impose a sentence “sufficient, but not greater than necessary,” to comply with the purposes set forth in 18 U.S.C. section 3553. Factors to be considered under 18 U.S.C. section 3553(a) include: the nature and circumstances of the offense; the defendant’s history and characteristics; the deterrence of future criminal conduct; and the need to protect the public. The United States Sentencing Guidelines were created to eliminate sentencing disparities and to guide district court judges so that the sentence imposed is a fair and appropriate one that fulfills the purposes of sentencing. During my experience as a federal prosecutor, I advocated for sentences, including both upward and downward departures from the Sentencing Guidelines, based on the applicable law. If confirmed, I would apply 18 U.S.C. section 3553, the Sentencing Guidelines, and the precedents of the United States Supreme Court and the Eighth Circuit to determine the appropriate sentence.

- 2. You called *Gideon v. Wainwright* a “heroic Davis vs. Goliath legal challenge.” What is your view regarding whether there should be a right to representation in civil cases?**

Response: The United States Constitution guarantees a right to counsel in criminal cases. That right does not extend to civil cases. Although I encourage and commend attorneys who provide pro bono legal services to civil litigants who cannot afford a lawyer, I am committed to fulfilling my responsibility to decide each case as a fair and impartial decision-maker without regard to whether a party in a criminal or civil case is represented by an attorney.

- 3. In a speech you gave, you wrote “Judiciary must reflect the diversity of society. So that the judgement and insight that come from diverse experiences can assist in the development of the law and the reality and perception of fairness and impartiality” (These comments can be found on page 1781 of your Senate attachments.)**

- a. How does diversity assist in the “development of the law?”**
- b. Please explain what you meant by diversity? What kinds of diversity should be excluded from the bench?**

Response: It has been my experience as a Justice on the Minnesota Supreme Court and as a Judge on the Minnesota Court of Appeals, in which jurists engage in collegial decision-making, that regional diversity and practice-area diversity in different jurisdictions

throughout state have enriched our deliberations regarding rules and procedures governing the practice of the law.

Similarly, in light of the number of highly qualified women lawyers and lawyers of color, for example, it would undermine the public's trust and confidence in the judiciary if there were no judges who are women or judges of color. I am unaware of any type of diversity that should be excluded from the bench, provided an attorney is learned in the law and has the ethical and moral fitness to serve as a judge. My comments reflect my belief that people of all backgrounds with the qualifications, experience and desire to be a judge should be encouraged to seek the opportunity to be considered for judicial appointment or election (in those jurisdictions, such as Minnesota, that elect judges).

4. **In another speech you gave, your notes indicated that you discussed “harsh penalties—the good, the bad” under the “United States Attorney’s Office” heading. (These comments can be found on page 1802 of your Senate attachments.) Please elaborate on what you believe to be harsh penalties.**

Response: My notes relate to a comparison of the nature of the United States Sentencing Guidelines during my tenure as a federal prosecutor, which in certain circumstances called for more severe penalties than the Minnesota Sentencing Guidelines for the same offense. My reference to harsh penalties was used merely for purposes of comparison. If confirmed, I would apply 18 U.S.C. section 3553, the Sentencing Guidelines and the precedents of the United States Supreme Court and the Eighth Circuit to determine the appropriate sentence.

5. **What role, if any, do you believe a federal judge should play in both seeking justice for victims and punishment for the offenders with the need to rehabilitate offenders? Please explain.**

Response: The goals of sentencing include punishment, rehabilitation and deterrence. I believe that a judge must be an impartial decision maker who imposes a just sentence that is guided by 18 U.S.C. section 3553(a) and the United States Sentencing Guidelines.

6. **What is the most important attribute of a judge, and do you possess it?**

Response: I believe the most important attribute of a judge is integrity. It is the foundation on which a commitment to the rule of law is built, and I do possess it.

7. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: The appropriate temperament for a judge is one that demonstrates respect for the court as an institution, the rule of law, the parties and their attorneys, the witnesses, and the jurors. This respect is shown by conducting an orderly proceeding and rendering a

timely and impartial decision based on the applicable law. I believe I have demonstrated the appropriate judicial temperament throughout my 15 years of judicial service.

- 8. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: If I am confirmed as a district judge, I will faithfully apply the precedents of the United States Supreme Court and the United States Court of Appeals for the Eighth Circuit, even if I personally disagree with such precedents.

- 9. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: If faced with a case of first impression involving the construction of a statutory provision, I would begin my analysis by applying the plain and ordinary meaning of the words. If the words of the statute render the statute's meaning ambiguous, then I would apply traditional canons of construction to determine the meaning of the statute. If necessary, I then would consider cases from other circuit courts and district courts that have addressed the same legal issue or an analogous legal issue for persuasive authority.

- 10. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: If confirmed as a district court judge, I would apply the precedents of the United States Supreme Court and the United States Court of Appeals for the Eighth Circuit, even if I believed the court seriously erred in rendering a decision.

- 11. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: Only in very limited circumstances is it appropriate for a federal court to declare a statute enacted by Congress unconstitutional. If confirmed as a district court judge, I would reach the constitutionality of a statute only if necessary for the disposition of a case. In those limited circumstances, my analysis would begin with the presumption that the statute, which has been enacted by Congress and signed into law by the President, is constitutional. A statute should not be declared unconstitutional unless it is clear that the statute is contrary to the text of the Constitution or when it is clear that Congress has exceeded its authority by passing the statute.

- 12. In your view, is it ever proper for judges to rely on foreign law, or the views of the “world community”, in determining the meaning of the Constitution? Please explain.**

Response: No, it is never proper for a district judge to rely on foreign law, or the views of the “world community” when determining the meaning of the United States Constitution. If confirmed as a district judge, I would not apply foreign law or the views of the “world community” when determining the meaning of the Constitution. Instead, I would apply the precedents of the United States Supreme Court and the United States Court of Appeals for the Eighth Circuit.

- 13. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?**

Response: If confirmed as a district judge, my decisions will be grounded in precedent and the text of the law. As demonstrated during my 15 years as a judge on three different courts, I would not render a judicial decision that is grounded in any political ideology or motivation.

- 14. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?**

Response: If confirmed as a district judge, I would set aside any personal views and treat all who appear before me respectfully. I have done so throughout my 15-year judicial tenure on three courts: the Minnesota Supreme Court, the Minnesota Court of Appeals and the Ramsey County District Court.

- 15. If confirmed, how do you intend to manage your caseload?**

Response: I believe that active case management is critical to the timely adjudication of cases. If confirmed, I would use all means available to avoid delays in the process. These include scheduling orders, status conferences, timely adjudication of motions, as well as orderly and efficient trial proceedings.

- 16. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?**

Response: Yes, judges play a large role in controlling the pace and conduct of litigation. If confirmed, I would use the methods identified in question 15 to control my docket.

- 17. Do you believe there is a right to privacy in the U.S. Constitution?**

a. Where is it located?

b. From what does it derive?

c. What is your understanding, in general terms, of the contours of that right?

Response: The Supreme Court has not held that there is a general constitutional right to privacy. But the Supreme Court has held that certain provisions of the Bill of Rights, the First, Third, Fourth and Fifth Amendments, along with the Fourteenth Amendment, reflect privacy rights and interests. For example, the Supreme Court has found a privacy interest in the First Amendment right of association in *NAACP v. Alabama*, 357 U.S. 449, 462 (1958). In addition, the Supreme Court has described the Fourth Amendment as protecting “privacy interests.” *Kentucky v. King*, 563 U.S. ___, 131 S.Ct. 1848, 1867 (2011).

If confirmed as a district court judge, I would carefully apply the precedents of the United States Supreme Court and the United States Court of Appeals for the Eighth Circuit to the facts of any case in which the constitutional right to privacy is raised.

18. President Obama said that deciding the “truly difficult” cases requires applying “one’s deepest values, one’s core concerns, one’s broader perspectives on how the world works, and the depth and breadth of one’s empathy . . . the critical ingredient is supplied by what is in the judge’s heart.” I realize you may not be aware of the specific context of this statement, but do you agree with that statement?

Response: I am not familiar with this statement or the context in which it is made. I believe that deciding cases – regardless of difficulty – requires adherence to binding precedent and application of the pertinent law to the facts of a case.

19. Please describe with particularity the process by which these questions were answered.

Response: I received these questions on July 29, 2015. After preparing my responses, I emailed them to the U.S. Department of Justice. I finalized my responses after speaking with a Justice Department official and authorized the Department of Justice to submit my answers to the Senate Judiciary Committee.

20. Do these answers reflect your true and personal views?

Response: Yes, these answers reflect my true and personal views.

Senator Thom Tillis
Questions for the Record
United States Senate Judiciary Committee

Questions for Justice Wilhelmina Marie Wright

1. Do you believe the Supreme Court ruled correctly in *Shelby County v. Holder* that certain states and local governments should no longer be subject to the preclearance provisions of the Voting Rights Act?

Response: The Supreme Court's decision in *Shelby County v. Holder*, 133 S. Ct. 2612, 2631 (2013), held that the coverage formula of Section 4(b) of the Voting Rights Act is unconstitutional. This decision is binding precedent. Accordingly, if confirmed, I will faithfully follow this decision as I would follow all binding precedent of the United States Supreme Court and the United States Court of Appeals for the Eighth Circuit without regard to any personal beliefs that I may have regarding any decision.

2. Similarly, do you believe there is a need for certain states to be subject to the preclearance provisions of the Voting Rights Act before administering their election laws while other states have no such requirement?

Response: The Supreme Court's decision in *Shelby County v. Holder*, 133 S. Ct. 2612 (2013), explicitly reaffirmed the "fundamental principle of *equal* sovereignty among the States." *Id.* at 2623 (emphasis in original) (quotation omitted). The Supreme Court relied on this fundamental principle to declare that the coverage formula outlined in Section 4(b) of the Voting Rights Act was unconstitutional. *Id.* at 2630-31. Accordingly, if confirmed, I will faithfully follow this binding precedent.

3. In North Carolina, an elected majority crafted comprehensive election reform designed to thwart voter fraud, streamline efficiency, save state resources, and restore voter confidence in the electoral process. These reforms were done even-handedly to ensure all qualified voters have a meaningful opportunity to participate in the electoral process. However, these reforms were challenged by politically motivated organizations, and the state of North Carolina has now spent millions of dollars defending

commonsense election law reform. A part of these reforms is a voter identification requirement that will go into effect next year. Do you believe voter ID laws are constitutional when their purpose is to protect the integrity of elections?

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 both 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 election process.'" If confirmed, I will faithfully follow this decision and all binding precedent from the United States Supreme Court and the United States Court of Appeals for the Eighth Circuit when deciding such issues.

Senator Cruz Questions for the Record:
Nomination Hearing for Wilhelmina Marie Wright, Wednesday, July 22, 2015

I. The U.S. Constitution and Private Property Rights

- At your nomination hearing, Senator Jeff Sessions (R-Alabama) asked you about your written opinions in an article while you were in law school.¹ Your writings about racial issues make the following verbatim statements:
 - “The practice of American racism is based on two principles: the sanctity of property and the belief in the hierarchy of races. The first of these principles is firmly protected by the words and action of the Constitution; the second is proscribed by the words of the instrument, but not by its effect. History shows that when these two principles are juxtaposed (which happens constantly), property rights are given absolute priority.”²
 - “The failure of today’s racial discourse is its reliance on 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. The fungibility of property can be no better exemplified than it is by slavery. The fact that our Constitution once recognized one person’s very life and liberty as another’s property should teach us the danger of letting property determine liberty rather than looking to liberty to define property.”³

1. Please provide the following:

- a. A more detailed explanation of the two above quotations from the below-cited article.**

Response: This writing was an assignment as part of a class in which I was enrolled. I do not recall the precise class assignment or question to which this reflection responded. However, my writing reflects my effort as a law student to describe two concepts: first, how the right to own people as property (slavery) could have been justified in the United States despite constitutional guarantees of freedom and equality and, second, how racially restrictive covenants were used to thwart the fair housing laws such as the Fair Housing Act, 42 U.S.C. §3601, *et seq.*, that were enacted to combat racial discrimination and to effectuate the property rights of owners who wished to exercise their right to free alienation of property.

- b. Yes or no answers to the following questions, with explanations of your yes or no answers:**

¹ 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).

² *Id.* at 1053.

³ *Id.* at 1054.

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i. Do you think the United States Constitution establishes positive rights?

Response: The United States Constitution generally enumerates negative rights establishing that which the government must not do rather than affirmative duties that the government must perform. Consistent with this principle, for example, the Supreme Court has stated “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 itself may not deprive the individual.” *DeShaney v. Winnebago Cnty. Dep’t of Soc. Servs.*, 489 U.S. 189, 196 (1989). A judge must render a decision based on an application of the controlling precedent to the facts of the case. If confirmed as a federal district judge, I will faithfully follow all relevant precedent from the United States Supreme Court and the United States Court of Appeals for the Eighth Circuit when deciding the case at hand.

ii. Do you think the United States Constitution provides private property protections beyond the one enumerated in the Fifth Amendment, which provides that private property shall not “be taken for public use, without just compensation?”

Response: The 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 any case or argument presented until I have fully researched and considered all of its issues. This includes a thorough review of the briefs, supporting materials, arguments of counsel, and research of the applicable law, statutes and legal precedent. Such preparation also incorporates the maxim of constitutional interpretation enunciated in *District of Columbia v. Heller*, that a judge should look to the normal and ordinary meaning of words as they were understood at the time of ratification to decide constitutional questions. 554 U.S. 570 (2008). If confirmed as a federal district judge, I will use this process and faithfully follow all relevant precedent from the United States Supreme Court and the United States Court of Appeals for the Eighth Circuit.

iii. Do you think the United States Constitution provides a right to federally subsidized housing?

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Response: The United States Constitution generally establishes that which the government must not do, rather than prescribe duties that the government must perform. *See, e.g., DeShaney v. Winnebago Cnty. Dep't of Soc. Servs.* 489 U.S. 189, 196 (1989). I am not aware of any Supreme Court precedent interpreting the United States Constitution to provide a substantive right to subsidized housing. Should such an argument be made, I would engage in the robust process that I described above in response to question ii. and follow all relevant precedent from the United States Supreme Court and the United States Court of Appeals for the Eighth Circuit.

iv. Do you think the concept of private property ownership is inherently racist?

Response: No, it was not my intent to convey in my writing that the concept of private property ownership is inherently racist. Indeed, Congress has enacted legislation such as the Fair Housing Act, 42 U.S.C. §3601 *et seq.*, which prohibits discrimination in the sale, rental and financing of dwellings, based on race, color, national origin, religion, sex, familial status and disability.

**Responses of Justice Wilhelmina M. Wright
Nominee, United States District Court for the District of Minnesota
to Questions for the Record of Senator David Vitter**

- 1. In a panel on Global Rule of Law, you said “Judiciary must reflect the diversity of society so that judgment and insight that come from diverse experiences can assist in development of the law and the reality and perception of fairness and impartiality.” By referring to “diverse experiences” providing insight into the development of law, then speaking of fairness and impartiality in the latter part of the quote, you seem to indicate that fairness and impartiality to all parties, especially ones that don’t fit the prerequisites of your particular agenda, are an afterthought and that the concepts of true fairness and impartiality are ones that you do not hold particularly dear despite the oath you took when you became a judge.**
 - a. Please explain your philosophy on impartiality and fairness in the judicial process, with particular emphasis on parties you may personally disagree with, but who still may have a meritorious claim or defense.**

Response: Fairness, impartiality, respect for the rule of law, and respect for all litigants are fundamental requirements for a judge. These are the values on which my oath as a judge is founded. Indeed, I have no agenda as a judge other than these values. In my nearly 15 years of service as a Justice on the Minnesota Supreme Court and as a Judge on the Minnesota Court of Appeals and the Ramsey County District Court, these values have been my lodestar, and I give no consideration to whether I agree or disagree with a party.

I also appreciate the opportunity to clarify my statement quoted above. I define diverse experiences broadly. It has been my experience as a Justice on the Minnesota Supreme Court and as a Judge on the Minnesota Court of Appeals, in which jurists engage in collegial decision-making, that regional diversity and practice-area diversity in different jurisdictions throughout Minnesota have enriched the deliberations regarding rules and procedures for the practice of law. Similarly, in light of the number of highly qualified women lawyers and lawyers of color who are learned in the law and have the ethical and moral fitness to serve as a judge, I believe it would undermine the public’s trust and confidence in the judiciary if there were no judges who are women or judges of color.

- b. What is your philosophy on judicial precedent and would you apply prior binding case law that resulted in a court decision that you personally disagree with?**

Response: In my 15 years of service on the bench, I have prided myself on my impartiality and fairness to all parties and my commitment to faithfully applying legal precedent. If I am confirmed as a district judge, I will faithfully apply the precedents of

the United States Supreme Court and the Eighth Circuit, even if I personally disagree with such precedents.

- 2. Under Minnesota law, when domestic abuse between the parties is not at issue, there is a presumption that joint legal custody is in the best interests of the child. In *Kellen v. Kellen*, you upheld a district court grant of sole legal custody of a child to one spouse when domestic abuse was not an issue, ignoring state law. Has your philosophy changed on respecting the legislative branch's authority to make law?**

Response: Under Minnesota law enacted by the Minnesota Legislature, a custody decision must be made by applying several factors, including "the best interests of the child." In *Kellen v. Kellen*, under the governing Minnesota statute, there was a rebuttable presumption that joint legal custody was in the best interests of the child. The district court applied that presumption of joint legal custody and found, based on the evidence presented to the district court, that the presumption in favor of joint legal custody had been rebutted. The legal standard of review for an appellate court in this case is abuse of discretion. Based on the application of this legal standard, the evidence in the record supported the district court's decision. For this reason, the Minnesota Court of Appeals unanimously affirmed the district court's decision.

- 3. What is your opinion of the constitutionality of the majority ruling, *NLRB v. Canning*, and what would be your allowable time frame between pro forma sessions of the senate before the president can soundly exercise his recess appointment power? Is it 3 days? 4? 5?**

Response: As a decision of the United States Supreme Court, *NLRB v. Canning, et al.*, 134 S. Ct. 2550 (2014), is binding precedent on all inferior courts. The Supreme Court concluded, "in light of historical practice, that a recess of more than 3 days but less than 10 days is presumptively too short to fall within the [Recess Appointment] Clause." *Id.* at 2567. However, the term "presumptively" used by the Court was used to leave open the possibility that a "very unusual circumstance" – such as "a national catastrophe...that renders the Senate unavailable but calls for urgent response – could demand the exercise of the recess-appointment power during a shorter break." *Id.* If confirmed, I would faithfully apply all decisions of the United States Supreme Court and the United States Court of Appeals for the Eighth Circuit.

- 4. In your opinion, is it an undue burden on a woman seeking an abortion under *Planned Parenthood v. Casey*, if a state requires that doctors performing the procedures having admitting privileges at one of the hospitals in the state to protect women's health and, as a result, all aborting clinics in the state are shut down?**

Response: In every case, a judge must apply the law of any binding precedent to the particular facts that have been developed through the presentation of evidence by all parties. The plurality decision of *Planned Parenthood v. Casey*, 505 U.S. 833 (1992),

reasoned that only when a state regulation of abortion imposes an “undue burden” on a woman’s ability to decide whether to terminate her pregnancy “does the power of the State reach into the heart of the liberty protected by the Due Process Clause.” *Id.* at 874. A regulation imposes an undue burden if its purpose or effect places a substantial obstacle in the path of a woman who seeks abortion of a nonviable fetus. *Id.* at 877. Nevertheless, a regulation that has an incidental effect that makes it more difficult or more expensive to procure an abortion is not enough to invalidate the regulation. *Id.* at 874. Moreover, regulations that are designed to foster the health of a woman who seeks an abortion are valid when they do not constitute an undue burden. *Id.* at 878. My research indicates that the facts described in this question have not been presented in a case decided by the United States Supreme Court or the Eighth Circuit. If a case of this nature were presented to me, I would conduct a thorough examination of all relevant evidence and faithfully follow the precedents of the United States Supreme Court and the Eighth Circuit.

5. The Court’s ruling on the right of privacy in *Griswold v. Connecticut* laid the foundation for *Roe v. Wade*. From your perspective, is *Roe v. Wade* settled law?

Response: As a decision of the United States Supreme Court, *Roe v. Wade*, 410 U.S. 113 (1973), is binding precedent until the United States Supreme Court decides to overrule it. However, the rule of law established in *Roe v. Wade* must be applied in the context of other subsequently decided cases of the United States Supreme Court, such as *Planned Parenthood v. Casey*, 505 U.S. 883 (1992), and *Gonzales v. Carhart*, 550 U.S. 124 (2007).

6. How would you reconcile the 2nd Amendment basic right under the Constitution to keep and bear arms made applicable to the states under the 14th Amendment in *McDonald v. City of Chicago* with the more recent crop of lower federal rulings upholding gun control laws, such as laws requiring gun registration laws making it illegal to carry guns near schools and post offices, and laws banning bottom loading semi-automatic pistols for protection?

Response: In *McDonald v. City of Chicago*, 561 U.S. 742 (2010), the United States Supreme Court reiterated its analysis in *District of Columbia v. Heller*, 554 U.S. 570 (2008), and held that the Fourteenth Amendment makes the Second Amendment right to bear arms fully applicable to states under the Due Process Clause, and this right is a substantive guarantee that is fundamental to our scheme of ordered liberty. The *McDonald* court also reiterated that citizens must be permitted to use handguns for the core lawful purpose of self-defense, which is a deeply rooted tradition. The Framers and ratifiers of the Fourteenth Amendment counted the right to keep and bear arms among those fundamental rights necessary to our system of ordered liberty. In doing so, the Supreme Court reversed the Seventh Circuit decision that affirmed a ban on the possession of firearms for the stated purpose of protecting Chicago’s residents from loss of property and from death from firearms. The Supreme Court in *Heller* also indicated that its opinion should not “be taken to cast doubt on longstanding prohibitions on the

possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.” 544 U.S. at 626-27. If confirmed, I would apply *McDonald v. City of Chicago*, 561 U.S. 742 (2010), *District of Columbia v. Heller*, 554 U.S. 570 (2008), and any other applicable precedents of the United States Supreme Court and the Eighth Circuit to any case with the facts described in the question presented here.