

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

Questions for Judge John Milton Young

1. In my written questions to you, I asked the following question: “A number of states, including North Carolina, have passed or introduced laws to protect women’s health. You have characterized *Roe v. Wade* and its progeny as settled law. Please address whether you consider the following settled law:
 - a. That a state can require a consultation with a physician or qualified professional at least 24 hours prior to an abortion procedure,
 - b. That a state can forbid an abortion if a significant factor in the woman’s decision is related to the gender of the unborn child,
 - c. That a state can require abortion facilities to meet the same standards as ambulatory surgical centers, and
 - d. That a state can require an ultrasound be made available to the woman before permitting an abortion.”

In response, you stated:

“This is an issue that is currently being debated in the courts throughout this land. It would be inappropriate for me to offer an opinion in response to this question.”

Your answer was non-responsive, and I would like to give you an opportunity to provide a responsive answer. Because you have opined on and characterized *Roe v. Wade* and its progeny as settled law, I would like to have a more comprehensive understanding of your views in this area of law. If *Roe v. Wade* and its progeny are in fact settled constitutional law, please address and answer individually the question and subparts stated above.

- a. That a state can require a consultation with a physician or qualified professional at least 24 hours prior to an abortion procedure,

Response: I consider an issue to be “settled” when the United States Supreme Court has ruled on a matter. In *Roe v. Wade*, 410 U.S. 113 (1973) and *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), the United States Supreme Court upheld the right of woman to legally obtain an abortion. To that extent, the law on abortion is settled. What is not settled is the extent to which the Court will allow restrictions on access to abortion, as evidenced by its holding in *Gonzales v. Carhart*, 550 U.S. 124 (2007), wherein Congress’s Partial-Birth Abortion Act was found to be constitutional. Since 2011, various states have promulgated more than 200 laws which restrict, in some form or fashion, access to abortion. It is, therefore, unclear whether or not the Supreme Court will consider the process described in the question as an unconstitutional restriction on access to abortion under *Planned Parenthood v. Casey*. It would also be inappropriate for me to proffer an opinion as to

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whether the referenced procedure will pass constitutional muster because pursuant to the Pennsylvania Rules of Judicial Conduct, Rule 2.10 (A), "A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in **any** court (emphasis added), or make any nonpublic statement that might substantially interfere with a fair trial or hearing".

- b. That a state can forbid an abortion if a significant factor in the woman's decision is related to the gender of the unborn child,**

Response: Please see my response to Question 1a.

- c. That a state can require abortion facilities to meet the same standards as ambulatory surgical centers, and**

Response: Please see my response to Question 1a.

- d. That a state can require an ultrasound be made available to the woman before permitting an abortion."**

Response: Please see my response for Question 1a.

2. In my written questions to you, I asked the following question:

When running for a judicial seat in Pennsylvania, you sought an endorsement from the Planned Parenthood Pennsylvania Political Action Committee. As you are aware, Planned Parenthood has been accused of illegally selling fetal tissue and organs at some of its facilities. Had you known this behavior was an alleged practice of Planned Parenthood when you were seeking election for a judicial seat in Pennsylvania, would you still have sought an endorsement from the Planned Parenthood Pennsylvania Political Action Committee"

In response, you stated:

"I have not studied this issue and can express no opinion as to how I would have responded if such accusations had been made in the past." This answer was non-responsive, and I would like to give you an opportunity to provide a responsive answer. Please take sufficient time to study the issue and respond.

Response: Had I known of this alleged controversy, before responding to the questionnaire, I would have studied the facts and the law regarding this issue to determine whether this practice was illegal, immoral or unethical. If I determined that it was any of those things, I would not have returned the questionnaire. I would note,

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however, there is disagreement as to the facts and implications of the current controversy. Therefore, pursuant to the Pennsylvania Rules of Judicial Conduct, I believe it would be inappropriate for me to make definitive findings of fact and conclusions of law regarding this controversy now and state what I would have done in the past.