

Senator Josh Hawley
Questions for the Record

Stephen P. McGlynn
Nominee, U.S. District Court for the Southern District of Illinois

1.

- a. What is your view of the scope of the First Amendment’s right to free exercise of religion?**

The right to the free exercise of religion is a fundamental right of each citizen expressly identified in the First Amendment. The historical significance of this right cannot be overstated. The scope of the right to free exercise of religion includes beliefs and practices. I would fully and faithfully follow precedent of the Supreme Court and the Seventh Circuit when handling cases involving this fundamental right.

- b. Is the right to free exercise of religion synonymous and coextensive with freedom of worship? If not, what else does it include?**

I will fully and faithfully follow the precedent of the Supreme Court and of the Seventh Circuit with respect to this particular question. Freedom of worship seems to focus on the citizen’s right to hold certain beliefs and to attend religious services. Free exercise of religion embraces much more, including conscientious objection to service in combat and the ability to live according to religious beliefs. For example, the religious tenets of the Amish have them living their lives in ways that is consistent with their faith, but different than many Americans today. Those lifestyle choices would not be normally understood as worship.

- c. What standard or test would you apply when determining whether a governmental action is a substantial burden on the free exercise of religion?**

I would look to the Religious Freedom Restoration Act and other similar laws. I would also faithfully apply the controlling precedents of the Supreme Court and the Seventh Circuit.

- d. Under what circumstances and using what standard is it appropriate for a federal court to question the sincerity of a religiously held belief?**

I will look to the Religious Freedom Restoration Act and other similar laws. I will fully and faithfully apply the controlling precedents of the Supreme Court and of the Seventh Circuit.

- e. **Describe your understanding of the relationship between the Religious Freedom Restoration Act and other federal laws, such as those governing areas like employment and education?**

I believe the RFRA sets out the scope and the intended interplay between it and other federal laws. I will fully and faithfully apply the controlling precedents of the Supreme Court and the Seventh Circuit with respect to this question.

- f. **Have you ever issued a judicial opinion, order, or other decision adjudicating a claim under the Religious Freedom Restoration Act, the Religious Land Use and Institutionalized Persons Act, the Establishment Clause, the Free Exercise Clause, or any analogous state law? If yes, please provide citations to or copies of those decisions.**

No.

2.

- a. **What is your understanding of the Supreme Court's holding in *District of Columbia v. Heller*?**

The principle holding of *District of Columbia v. Heller*, is that the Second Amendment grants individual citizens the right to keep and bear arms.

- b. **Have you ever issued a judicial opinion, order, or other decision adjudicating a claim under the Second Amendment or any analogous state law? If yes, please provide citations to or copies of those decisions.**

No.

3. **Under what circumstances do you believe it is appropriate for a federal district judge to issue a nationwide injunction against the implementation of a federal law, administrative agency decision, executive order, or similar federal policy?**

Questions involving the issuance of nationwide injunctions by District Judges are presently being litigated and the subject of pending or impending litigation in the Supreme Court and the Seventh Circuit. Therefore, I believe the Canons of the Code of Conduct for United States Judges instruct that I refrain from answering this question. I will faithfully apply precedent of the Supreme Court and the Seventh Circuit.

- 4. Please state whether you agree or disagree with the following statement and explain why: “Absent binding precedent, judges should interpret statutes based on the meaning of the statutory text, which is that which an ordinary speaker of English would have understood the words to mean, in their context, at the time they were enacted.”**

I agree.

- 5. Dissenting in *Lochner v. New York*, Justice Oliver Wendell Holmes Jr. wrote that “[t]he Fourteenth Amendment does not enact Mr. Herbert Spencer’s Social Statics.”**

- a. What do you believe Justice Holmes meant by that statement, and do you agree with it?**

I believe that at the time this opinion was written, such a phrase would have been understood to mean Mr. Spencer’s conditions essential to happiness. My interpretation is that the line reflects Justice Holmes view regarding the relative weight to assign to an individual’s freedom to enter into contracts of his choosing as well as any economic liberty interests an individual may by virtue of the express or implied rights granted and protected by the United States Constitution. *Lochner* was subsequently reversed and I am obliged to follow the precedents of the Supreme Court and the Seventh Circuit. I think that it would be improper for me to critique or offer personal opinions about Justice Holmes’ dissent.

- b. Do you believe that *Lochner v. New York*, 198 U.S. 45 (1905), was correctly decided? Why or why not?**

Lochner has been reversed. If confirmed, I am obligated to follow the precedent of the Supreme Court and the Seventh Circuit and will do so. I am aware that there is an academic debate about *Lochner*.

6. In *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), the Supreme Court set out the precedent of judicial deference that federal courts must afford to administrative actions.

a. Please explain your understanding of the Supreme Court's holding in *Chevron*.

Chevron held that when statutory ambiguity leaves a "gap for the agency to fill, there is an express delegation of authority to the agency to elucidate a specific provision of the statute by regulation. Such legislative regulations are given controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute. *Id.* 467 U.S. 837, 843-44 (1984).

b. Please describe how you would determine whether a statute enacted by Congress is ambiguous.

If it is reasonably capable of more than one interpretation or so incoherent that the language leaves doubt that interpretation is most probably an accurate interpretation

c. In your view, is it relevant to the *Chevron* analysis whether the agency that took the regulatory action in question recognized that the statute is ambiguous?

I think it would be improper for me to give my view on this question. I will fully and faithfully follow the precedent of the Supreme Court and of the Seventh Circuit.