

Responses of Jon David Levy, Nominee to be United States District Judge for the District of Maine, to the Written Questions of Senator Ted Cruz

Describe how you would characterize your judicial philosophy, and identify which US Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: My judicial philosophy is to be faithful to the rule of law, remaining ever mindful of the separation of powers and the role of precedent, and to fairly and impartially decide each case based on the evidentiary record and controlling law. While I frequently apply Supreme Court decisions as binding precedent in my current position as a Justice of the Maine Supreme Judicial Court, I have not studied the body of decisions of any single Justice of the Warren, Burger, or Rehnquist Courts so as to be in a position to identify which individual Justice's judicial philosophy is most analogous to mine.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

Response: Yes. As the Supreme Court explained in *District of Columbia v. Heller*, 554 U.S. 570, 605 (2008), the public understanding of the meaning of the text of the Constitution when it was enacted plays an important role in constitutional interpretation. If confirmed, I will follow all binding Supreme Court and First Circuit precedent with respect to interpretation of the Constitution.

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Response: If I am confirmed as a judge of the District Court, I would not overrule precedent.

Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).

Response: The Supreme Court's decision in *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528 (1985), is binding precedent. Therefore, if confirmed, I would follow and apply the holding in *Garcia* as I would all other precedent established by the Supreme Court.

Do you believe that Congress's Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: The United States Supreme Court has held that Congress's Commerce Clause power extends to regulating: (1) the use of the channels of interstate commerce; (2) the instrumentalities of interstate commerce; and (3) activities having a substantial relation to interstate commerce. See *United States v. Morrison*, 529 U.S. 598, 608-09 (2000); *United States v. Lopez*, 514 U.S.

549, 558-59 (1995). These cases likewise stand for the proposition that the Commerce Clause does not empower Congress to regulate non-economic activity that has only an attenuated effect on interstate commerce. See *Morrison*, 529 U.S. at 612-13 (citing *Lopez*, 514 U.S. at 563-67). If confirmed, I would follow and apply Supreme Court and First Circuit precedent that limits Congress's power to regulate non-economic activity under the Commerce Clause.

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: The President's authority to issue executive orders or take executive actions is subject to the limits on the exercise of federal power set forth in the Constitution and specific acts of Congress. Guidance for determining whether the President has exceeded the constitutional limits on his authority is set forth in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635-38 (1952) (Jackson, J., concurring), and in subsequent cases such as *Medellin v. Texas*, 552 U.S. 491 (2008) and *Dames & Moore v. Regan*, 453 U.S. 654 (1981). Furthermore, regulatory actions by the executive branch are subject to limitations set forth in cases such as *Gonzales v. Oregon*, 546 U.S. 243 (2006) and *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). If confirmed, I would faithfully apply these and all other relevant precedent of the Supreme Court and First Circuit.

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: The Supreme Court has held that a right is fundamental for purposes of substantive due process when it is "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, 720-21 (1997) (citations omitted). If confirmed, I would follow all applicable Supreme Court and First Circuit precedent in addressing issues involving fundamental rights.

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: The Supreme Court has applied heightened scrutiny in certain cases involving classifications based on race, religion, national origin, and gender, or when "state laws impinge on personal rights protected by the Constitution." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985). With respect to strict scrutiny, the Court has stated that it only applies in cases where the characteristics of a class, such as race, "so seldom provide a relevant basis for disparate treatment." *Fisher v. University of Texas at Austin*, 133 S. Ct. 2411, 2418 (2013) (quoting *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 505 (1989)). The Court has stated that intermediate scrutiny applies to gender-based classifications, see *United States v. Virginia*, 518 U.S. 515, 532-34 (1996), and classifications based on illegitimacy, see *City of Cleburne*, 473 U.S. at 441. If confirmed, I would follow all relevant Supreme Court and First Circuit precedent regarding the level of judicial scrutiny to be given to a classification.

Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

Response: I have not formed an expectation concerning the use of racial preferences fifteen years from now. If confirmed, I would follow Supreme Court precedent concerning the use of racial preferences, including *Grutter v. Bollinger*, 539 U.S. 306 (2003) and *Fisher v. University of Texas at Austin*, 133 S. Ct. 2411 (2013).