

Senator Ted Cruz
Questions for the Record

Cynthia Ann Bashant
Nominee: U.S. District Court for the Southern District of California

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 approach every case with an open mind, make sure all parties are adequately heard, research the relevant law, limit my ruling to the specific issue at hand, determine the facts based on the evidence presented and then apply the relevant law to the facts. I have not studied any particular Supreme Court Justice well enough to know whether he or she completely embodies my judicial philosophy.

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: The Supreme Court has employed originalism to interpret the Constitution. *See e.g. District of Columbia v. Heller*, 554 U.S. 570 (2008). If confirmed as a district court judge, I would follow this precedent.

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: I would not overrule precedent as a district court judge.

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: If confirmed, I would be bound by the Supreme Court's decision in *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528 (1985), and I would follow this precedent.

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

Response: The Supreme Court has recognized limits on the power of Congress to regulate non-economic activity pursuant to the Commerce Clause. *See, e.g., United States v. Morrison*, 529 U.S. 598 (2000); *United States v. Lopez*, 514 U.S. 549 (1995). However, in *Gonzales v. Raich*, 545 U.S. 1 (2005), Justice Scalia noted that "Congress may regulate

even noneconomic local activity if that regulation is a necessary part of a more general regulation of interstate commerce.” *Id.* at 37 (Scalia, J., concurring). If confirmed as a district judge, I would follow all binding Supreme Court and Ninth Circuit precedent regarding the issue of Congressional regulatory powers.

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

Response: The standard for judicial review of executive orders and executive actions by the President is set forth in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635-38 (1952) (Jackson, J., concurring). The President can issue executive orders or take executive action if the Constitution or an act of Congress provides the President with the authority to do so.

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 the substantive due process doctrine only if it is deeply rooted in our nation's history and tradition and "implicit in the concept of ordered liberty." *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997) (internal citation omitted). If confirmed, I will follow this and all binding precedent from the Supreme Court and the Ninth Circuit concerning the substantive due process doctrine.

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

Response: The Supreme Court has held that heightened scrutiny under the Equal Protection Clause, either strict or intermediate scrutiny, is appropriate when a classification burdens a fundamental right or when it differentiates categories such as race, national origin or gender. *City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 440 (1985); *Massachusetts Bd. of Retirement v. Murgia*, 427 U.S. 307, 312 (1976). If confirmed, I would follow binding precedent from the Supreme Court and the Ninth Circuit on this issue.

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 any expectation as to when the use of racial preferences in public higher education will no longer be necessary. However, if confirmed as a district judge, I would follow binding Supreme Court precedent concerning the legality of such racial preferences, including the precedent established by *Grutter v. Bollinger*, 539 U.S. 306 (2003) and *Fisher v. University of Texas at Austin*, 133 S. Ct. 2411 (2013).