

Questions for the Record
Senator Ted Cruz

Richard Franklin Boulware II,
Nominee, U.S. District Judge for the District of Nevada

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

Response: If confirmed as a district court judge, my judicial philosophy would be a commitment to a fair and impartial process with a strict adherence to precedent and the rule of law. I have not sufficiently studied the opinions of the justices from the Warren, Burger, or Rehnquist Courts to be able to determine which justice's philosophy is most analogous to mine.

- 2. 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: In cases such as *District of Columbia v. Heller*, 554 U.S. 570, 603 (2008), the Supreme Court indicated that the contemporaneous public understanding of the Constitution is an important factor for courts in interpreting the Constitution. If confirmed, I would follow the Supreme Court's precedent in *Heller* as well as any other controlling Supreme Court or Ninth Circuit precedent regarding the interpretation of the Constitution.

- 3. 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 confirmed as a district court judge, I would not and could not overrule precedent. I would follow the precedent set forth by the Supreme Court and the Ninth Circuit.

- 4. 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 as a district court judge, I would follow the Supreme Court's decision in *Garcia* as well as any other related Supreme Court or Ninth Circuit precedent regarding state sovereign interests.

- 5. 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 outlined in various decisions, such as *United States v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000), the tests or inquiries to determine the extent and limitations on Congress' Commerce Clause. Regarding the regulation of noneconomic activity, Justice Scalia has suggested that Congress may regulate noneconomic activity that has a substantial relation to interstate commerce. See *Gonzales v. Raich*, 545 U.S. 1, 37 (2005)(Scalia, J., concurring). If confirmed as a district court judge, I would follow Supreme Court and Ninth Circuit precedent in deciding cases related to the Commerce Clause.

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

Response: The Supreme Court indicated in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952), that the "President's power, if any, to issue [an] order must stem either from an act of Congress or from the Constitution itself." The Court further provided a basic analytic framework for reviewing executive action in the *Youngstown* decision. In various subsequent cases, such as *Dames & Moore v. Regan*, 453 U.S. 654 (1981), the Supreme Court has explained and elaborated upon the analytic framework for reviewing executive action. If confirmed as a district court judge, I would follow the Supreme Court's precedent in this and all other areas of the law.

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

Response: The Supreme Court has explained that a right may be fundamental if it is expressly stated in the Bill of Rights or if it is "deeply rooted in this Nation's history and tradition." *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997). If confirmed as a district court judge, I would follow Supreme Court and Ninth Circuit precedent in deciding cases regarding fundamental rights.

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

Response: The Supreme Court has identified the classifications which are subject to heightened scrutiny under the Equal Protection Clause. They include race, alienage, and national origin, which require strict scrutiny; and gender and illegitimacy, which require intermediate scrutiny. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439-41 (1985). If confirmed as a district court judge, I would follow Supreme Court and Ninth Circuit precedent in determining when to apply heightened scrutiny under the Equal Protection Clause to a particular case.

9. 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 do not have any expectations regarding the continued use or lack of use of racial preferences in public higher education. If confirmed as a district court judge, I would follow the Supreme Court's decision in *Grutter* and *Fisher v. University of Texas at Austin*, 133 S. Ct. 2411 (2013), and any other Supreme Court or Ninth Circuit precedent on the use of race in admissions to public institutions of higher education without regard to any expectations I might have.