

Responses of Paul G. Byron
Nominee to the United States District Court for the Middle District of Florida
To the Written Questions of Senator Ted Cruz

- 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: I believe a judge must respect the rule of law and be cognizant of the court’s limited role in our constitutional democracy. I further believe that a judge must demonstrate thoughtfulness, diligence, intellectual honesty and a firm commitment to the principle of stare decisis. If I am confirmed, my judicial philosophy will be to decide only those cases and controversies properly before me and to base my decision upon binding precedent of the United States Supreme Court and the Eleventh Circuit Court of Appeals. While I have read opinions from the Warren, Burger and Rehnquist Courts, I have not studied the individual justices sufficiently to enable me to characterize a particular justice’s philosophy as analogous to my own.

- 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: The United States Supreme Court has employed originalism to interpret the Constitution. Therefore, if confirmed as a District Court Judge, I would follow cases from the Supreme Court which have examined the original public meaning of constitutional provisions in deciding the constitutionality of statutes, *see, e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008).

- 3. If a decision is precedent today while you’re going through the confirmation process, under what circumstances would you overrule that precedent as a judge?**

Response: As a District Court Judge, I would be bound by the precedent of the United States Supreme Court and the Eleventh Circuit Court of Appeals. I would not and could not overrule any precedent.

- 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: The United States Supreme Court in *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 550 (1985) noted that, with few exceptions, the Constitution does not contain an enumeration of rights retained by the States and that “[a]part from the limitation on federal authority inherent in the delegated nature of Congress’ Article I powers, the principal means chosen by the Framers to ensure the role of the States in the federal system lies in the structure of the Federal Government itself.” However, in other

cases, the Supreme Court has also determined that state sovereign interests are protected via judicially created limitations on federal power. For example, in *Printz v. United States*, 521 U.S. 898 (1997), the Supreme Court limited federal power by declaring that certain provisions of the Brady Act were unconstitutional, because they preempted state sovereign rights. See also *New York v. United States*, 505 U.S. 144 (1992). If confirmed as a District Court Judge, I would follow all applicable precedent.

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 United States Supreme Court in *United States v. Morrison*, 529 U.S. 598 (2000), and *United States v. Lopez*, 514 U.S. 549 (1995), held that the federal laws under consideration were unconstitutional because they exceeded congressional power under the Commerce Clause. In both cases, the Supreme Court emphasized the noneconomic nature of the activity being subjected to federal regulation. Neither of these opinions, however, hold that the Commerce Clause may never extend to noneconomic activity. In *Gonzales v. Raich*, 545 U.S. 1, 37 (2005), Justice Scalia's concurring opinion cited the Necessary and Proper Clause in conjunction with the Commerce Clause to opine that "Congress may regulate even noneconomic local activity if that regulation is a necessary part of a more general regulation of interstate commerce." If confirmed as a District Court Judge, I would follow all applicable precedent from the Supreme Court and the Eleventh Circuit Court of Appeals.

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

Response: The United States Supreme Court held, in *Medellin v. Texas*, 552 U.S. 491, 524 (2008) (quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952)), that the "President's authority to act, as with the exercise of any governmental power, 'must stem either from an act of Congress or from the Constitution itself.'" Judicially enforceable limits on the President's ability to issue executive orders or executive actions thereby include circumstances wherein the President acts without express constitutional or statutory authority, or when the executive action impermissibly interferes with the functions that the Constitution assigns to another branch of government or otherwise violates a constitutional or statutory provision. If confirmed as a District Court Judge, I would follow all applicable precedent from the Supreme Court and the Eleventh Circuit Court of Appeals.

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

Response: For purposes of substantive due process protection, fundamental rights include those liberties that the United States Supreme Court has found to be "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, 721 (1997). If confirmed as a District Court Judge, I would

apply that precedent.

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

Response: The United States Supreme Court has held that certain classifications, such as race, gender, national origin, or classifications that burden a fundamental right, are subject to a higher level of scrutiny under the Equal Protection Clause. *See City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 440-442 (1985).

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: The United States Supreme Court noted in *Grutter* that “race-conscious admissions policies must be limited in time. This requirement reflects that racial classifications, however compelling their goals, are potentially so dangerous that they may be employed no more broadly than the interest demands.” *Grutter*, 539 U.S. at 342. While I have no personal opinion as to whether the use of racial preferences will no longer be necessary in public higher education 15 years from now, if confirmed as a District Court Judge, I will apply precedent from the Supreme Court and the Eleventh Circuit Court of Appeals.