

Questions for the Record
For Valerie E. Caproni, to be United States District Judge for the Southern District of New York
Senator Ted Cruz
5-23-13 Nominations Hearing

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 would be to apply the law fairly and impartially to the facts and to treat all who appear before me, whether as a party or an attorney, with respect and patience. The role of a judge in our constitutional system is to interpret the law and apply it to the cases that come before the judge. I am not sufficiently knowledgeable of the judicial philosophies of the Justices who served on the Warren, Burger and Rehnquist Courts to know to whose philosophy mine would be most analogous, but I would note that as a district court judge, my job would be to apply precedent from the Supreme Court.

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: I do not believe that the Constitution is an evolving document whose meaning constantly changes. I believe the original intent of the drafters is important in interpreting the Constitution. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570, 576-603 (2008).

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 be bound by controlling precedent. I would have no authority to overrule decisions of the Supreme Court or the United States Court of Appeals for the Second Circuit.

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: This decision by the Supreme Court is binding on lower courts. Regardless of my personal opinions, if any, I would abide by controlling 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 long held that Congress has the power under the Commerce Clause to regulate the following: the channels of interstate commerce; the instrumentalities of interstate commerce; and activities that "substantially affect" interstate commerce. *See, e.g., Gonzales v. Raich*, 545 U.S. 1, 16-17 (2005); *United States v. Morrison*, 529 U.S. 598, 608-09

(2000); *United States v. Lopez*, 514 U.S. 549, 558 (1995). Justice Scalia noted in a concurring opinion in *Gonzalez v. Raich* that “Congress may regulate even non-economic activity if that regulation is a necessary part of more general regulation of interstate commerce,” *Gonzales v. Raich*, 545 U.S. at 37 (Scalia, J., concurring). If I were faced with a case that presented a challenge to the constitutionality of a statute that extended to non-economic activity, I would need to research carefully the issue to ensure that my decision was consistent with controlling precedent.

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

Response: In *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), the Supreme Court invalidated President Truman’s action in seizing steel mills during the Korean War, writing: “The President’s power, if any, to issue the order must stem either from an act of Congress or from the Constitution itself.” *Id.* at 585. Justice Jackson’s concurring opinion in *Youngstown Sheet & Tube Co.*, set forth the analytic framework that continues to be used by the Court to measure the judicially-enforceable limits of the President’s power. *Id.* at 634-55 (Jackson, J., concurring). If confirmed, I would apply that framework and follow controlling precedent to determine the limits of presidential power.

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

Response: In *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997), the Supreme Court explained the two primary features of its substantive due process analysis. First, the Due Process Clause protects fundamental rights and liberties that are “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.” *Id.* at 720-21 (citations and internal quotations marks omitted). Second, the Court requires “a careful description of the asserted fundamental liberty interest.” *Id.* (citations and internal quotation marks omitted). As a district court judge, I would apply that framework and follow controlling precedent in deciding substantive due process cases.

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

Response: The Supreme Court has held that classifications based on race, gender or other suspect classification are subject to heightened scrutiny, as are classifications that burden a fundamental right, such as the right to vote or travel.

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 no expectation one way or the other. I understand that *Fisher v. University of Texas*, currently pending before the Supreme Court, presents the issue of the constitutionality of certain steps University of Texas has taken to enroll a diverse student body. If I am confirmed as

a district court judge, I will follow controlling precedent on this issue, regardless of my personal opinion, if any.