

Questions for the Record
Senator Ted Cruz

Responses of Vince Girdhari Chhabria
Nominee, United States District Court for the Northern District of California
9/25/2013 Judicial Nominations Hearing

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, my approach would be to decide cases impartially, applying the law to the facts as narrowly as possible, without deciding or addressing any issues unnecessary to the resolution of the case. I served as a law clerk at the United States Supreme Court during the October 2001 term. I developed a deep respect for all nine of the Justices who served during that term, and would seek to emulate qualities in all of them, but two Justices come immediately to mind, perhaps because I knew them best of the nine. First, with respect to my former boss, Justice Stephen Breyer, I would seek to emulate his open-mindedness, his tireless work ethic, and his passion for the law. Second, during my clerkship I came to know the late Chief Justice William Rehnquist as the ultimate straight shooter – someone who spoke and wrote clearly, decided cases impartially, issued short opinions that said no more than necessary, and got his work done very quickly. In these respects, the Chief possessed the most important attributes of a district judge, and above all I would seek to emulate those attributes if confirmed.

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: If confirmed, I would follow binding Supreme Court and Ninth Circuit precedent with respect to interpretation of the Constitution. As the Supreme Court recently explained in *District of Columbia v. Heller*, 554 U.S. 570, 605 (2008), public understanding of text around the time of enactment plays a critical role in constitutional interpretation, and I would follow that and all other binding 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: If confirmed as a district judge, I would never 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 made this statement in holding that the San Antonio Metropolitan Transit Authority was not immune from federal minimum wage and overtime requirements. In

other cases, the Supreme Court has struck down the imposition of federal requirements upon the states. *See, e.g., Printz v. United States*, 521 U.S. 898 (1997). If confirmed, I would faithfully apply *Garcia*, *Printz*, and any other Supreme Court or Ninth Circuit precedent regarding limitations on federal power in relation to the states.

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

Response: Under Supreme Court precedent, there are three areas in which Congress may regulate pursuant to its Commerce Clause power: (1) the channels of interstate commerce; (2) the instrumentalities of interstate commerce, or people or things in interstate commerce; and (3) activity that has a substantial effect on interstate commerce. *See, e.g., United States v. Morrison*, 529 U.S. 598 (2000), *United States v. Lopez*, 514 U.S. 549 (1995). Although *Morrison* and *Lopez* emphasized the non-economic nature of the conduct Congress attempted to regulate in those cases, they did not hold that Congress could never regulate non-economic conduct pursuant to its Commerce Clause authority. In his concurring opinion in *Gonzales v. Raich*, 545 U.S. 1, 37 (2005), Justice Scalia concluded that under the Court's Commerce Clause jurisprudence Congress may regulate non-economic activity if doing so was a necessary part of a more general regulation of interstate commerce. If confirmed, I would faithfully apply *Morrison*, *Lopez*, *Raich* and all other applicable Supreme Court and Ninth Circuit precedent to the facts of the case in adjudicating any Commerce Clause question.

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

Response: The President's ability to issue executive orders or take executive action is subject to the limits on the exercise of federal power set forth in the constitution, including the Bill of Rights. The guidelines for determining whether the President has exceeded these limits are set forth in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635-38 (1952) (Jackson, J., concurring), along with the opinions of the Court in subsequent cases such as *Medellin v. Texas*, 552 U.S. 491 (2008) and *Dames & Moore v. Regan*, 453 U.S. 654 (1981). In addition, executive branch regulatory actions 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 Def. Council, Inc.*, 467 U.S. 837 (1984). If confirmed and called upon to adjudicate a case involving the limits of executive power, I would faithfully apply these and all other pertinent Supreme Court and Ninth Circuit precedent.

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

Response: Under Supreme Court precedent, a right is "fundamental" only if it is deeply rooted in our nation's history and tradition and "implicit in the concept of ordered liberty." *Chavez v. Martinez*, 538 U.S. 760, 775 (2003). *See also McDonald v. City of Chicago*, 130 S. Ct. 3020, 3034 (2010). If confirmed, I would follow this and all other applicable Supreme Court and Ninth Circuit precedent in adjudicating any question regarding fundamental rights.

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

Response: The Supreme Court has applied strict or intermediate scrutiny in only a narrow set of cases, such as those involving classifications based on race, gender and religion. 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. Univ. of Texas at Austin*, 133 S. Ct. 2411, 2418 (2013) (quoting *Richmond v. J.A. Croson Co.*, 488 U.S. 469, 505 (1989)). The Court has stated that intermediate scrutiny applies to gender-based classifications because, even though there are sometimes legitimate reasons to classify based on gender, such classifications have historically been used “to create or perpetuate the legal, social, and economic inferiority of women.” *United States v. Virginia*, 518 U.S. 515, 534 (1996). If confirmed, I would follow binding Supreme Court and Ninth Circuit precedent in adjudicating any question regarding heightened scrutiny.

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: In *Grutter*, the Supreme Court held that the use of racial preferences in admission to the University of Michigan Law School lawfully served the school’s interest in a diverse student body, but predicted that by 2028 the use of racial preferences “will no longer be necessary to further the interest approved today.” 539 U.S. at 343. If confirmed, I would apply binding Supreme Court and Ninth Circuit precedent on the use of race in university admissions, including the Court’s recent decision in *Fisher v. Univ. of Texas at Austin*, 133 S. Ct. 2411 (2013).