

Questions for the Record
Senator Ted Cruz

James Donato
Nominee, U.S. District Judge for the Northern 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: I believe a judge should be decisive, transparent in decision-making, impartial, civil and respectful to litigants and counsel, a good listener, should maintain a calm demeanor, and have an unwavering commitment to the rule of law and to following Supreme Court precedent. I have not undertaken a substantive study of the Justices of the Warren, Burger or Rehnquist Courts, but I believe all of the Justices in those Courts were committed to similar principles and I therefore cannot identify a particular Justice most analogous with my views.

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 as a District Judge, I will follow Supreme Court precedent where the Court used originalism to interpret the Constitution. For example, the Supreme Court recently held that the public understanding of a legal text in the time after enactment is a "critical tool of constitutional interpretation." *District of Columbia v. Heller*, 554 U.S. 570, 605 (2008). I will follow this and all other Supreme Court 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 follow precedent and be powerless to overrule it.

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 Judge, I would be bound to follow *Garcia* and all other precedent from the Supreme Court.

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

Response: Recent Supreme Court decisions have found limits on Congress's power to regulate non-economic activity under the Commerce Clause. See, e.g., *United States v. Morrison*, 529

U.S. 598 (2000); *United States v. Lopez*, 514 U.S. 549 (1995). These cases stand for the proposition that the Commerce Clause does not empower Congress to regulate non-economic activity with only an attenuated effect on interstate commerce. 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, I will follow precedent on the Commerce Clause decided by the Supreme Court.

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

Response: The Supreme Court held in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), that the President’s powers to issue executive orders or take executive actions are circumscribed by the Constitution and acts of Congress. See also *Medellin v. Texas*, 552 U.S. 491, 524 (2008) (President’s authority to act “‘must stem either from an act of Congress or from the Constitution itself.’”) (citation omitted). If confirmed, I will follow Supreme Court precedent on this issue.

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

Response: The Supreme Court has found certain rights to be “fundamental” for purposes of the substantive due process doctrine when they are “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, 720 (1997) (citations omitted). If confirmed, I will follow Supreme Court precedent on these issues, without regard to any personal beliefs I might or might not have.

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

Response: The Supreme Court has applied heightened scrutiny under the Equal Protection Clause when evaluating “suspect” classifications such as race and national origins. It has also stated that heightened scrutiny should be applied when a classification burdens a right that the Court has deemed fundamental.

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 Supreme Court has recently addressed racial preferences in public higher education in *Grutter* and *Fisher v. University of Texas at Austin*, 133 S.Ct. 2411 (2013). If confirmed, I would follow the Supreme Court’s precedent on this issue without regard to any personal views or expectations.