

**Response of Jennifer Dorsey
Nominee to be United States District Court Judge for the District of Nevada
to the Written Questions of Senator Ted Cruz**

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 that judges should be fair, impartial, and respectful to the litigants, hardworking, and always well prepared. A judge should remain mindful of the judiciary's limited role in our Constitutional system to apply the well-researched law to the facts of each particular case. I have not studied Supreme Court history with an eye toward the judicial philosophies of the Justices, so I cannot analogize my beliefs to those of any one jurist.

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: When interpreting the text of the Constitution, a district court judge should look to binding precedent from the United States Supreme Court and his or her Court of Appeals. If the answer cannot be determined from precedent or analogous cases, a judge should look to the text of the Constitution, employing the plain and ordinary meaning of its express language. If the plain meaning cannot be determined or is unclear, original intent may be helpful in ascertaining the meaning of Constitutional provisions.

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: Unless the precedent is overturned by the United States Supreme Court or the Ninth Circuit Court of Appeals, I would be bound to follow it and have no authority 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: As a judicial nominee, I do not feel it would be appropriate for me to express a personal opinion about a precedent of the United States Supreme Court. Supreme

Court precedent is binding on district court judges. If confirmed as a district court judge, I would apply all binding legal precedent, including *Garcia*, and my personal opinion, if any, would play no role in my decision.

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 has identified three broad categories of activity that Congress may regulate under the Commerce Clause power: “(1) use of the channels of interstate commerce, (2) the instrumentalities of interstate commerce, or persons and things in interstate commerce, and (3) activities that ‘substantially affect’ interstate commerce.” *Gonzales v. Raich*, 545 U.S. 1, 22 (2005) (Scalia, J., concurring in the judgment) (quoting *Perez v. U.S.*, 402 U.S. 146, 150 (1971)). In *United States v. Lopez*, 514 U.S. 549 (1995), and *United States v. Morrison*, 529 U.S. 598 (2000), the Supreme Court articulated limitations on the reach of the Commerce Clause power to certain specific non-economic activities. If confirmed as a district court judge, I would follow all applicable Supreme Court and Circuit Court precedent in evaluating a Commerce Clause question.

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

Response: As the United States Supreme Court stated in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952), the President's power to issue executive orders or actions “must stem either from an act of Congress or from the Constitution itself.” These limits are judicially enforceable.

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

Response: The Supreme Court has held that rights are “fundamental” for purposes of the substantive due process doctrine when “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 & 727 (1997) (internal citations and quotation marks omitted).

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

Response: The Supreme Court has held that a classification should be subjected to heightened scrutiny under the Equal Protection Clause when it targets a suspect class (e.g., race, alienage, national origin, or gender) or involves a fundamental right.

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 specific expectation about the future use of racial preferences in public higher education. If confirmed, I would apply *Grutter* and any other binding Supreme Court precedent.