

**Response of Sara Lee Ellis
Nominee to be United States District Judge for the Northern District of Illinois
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: My judicial philosophy is to adhere to the rule of law and apply the law in a fair and impartial manner to the facts presented to the court. Additionally, my judicial philosophy would call for treating all litigants with courtesy, respect, and an even hand. Finally, my judicial philosophy would call for resolving legal issues promptly, decisively, and after thorough application of the relevant legal principles to the facts at hand. I have not studied the judicial philosophies of the Supreme Court Justices and thus, could not identify the philosophy of any particular Justice that I would follow. However, the judicial philosophy I have identified above is one that I have admired and observed in many judges in the Northern District of Illinois. If fortunate enough to be confirmed, I would follow this judicial philosophy.

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 the Seventh Circuit and Supreme Court precedent in interpreting the Constitution. The Supreme Court has applied originalism in cases including *District of Columbia v. Heller*, 554 U.S. 570 (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: As a district court judge I would not have authority to overrule legal precedent and there is no circumstance where I would seek to do so.

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's holding in *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985) is binding on a district court judge and if confirmed, I would apply this legal precedent without regard to my personal feelings, if any, on the issue.

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

Response: In *United States v. Lopez*, 514 U.S. 549, 558-59 (1995), the Supreme Court identified three categories of activity which Congress may regulate under the Commerce Clause. These

categories include: (1) the use of the channels of interstate commerce; (2) the instrumentalities of interstate commerce; and (3) activities having a substantial relation to interstate commerce. *Id.* In those cases, where the Supreme Court struck down an act of Congress, the court noted the non-economic nature of the activities being regulated. If confirmed, I would apply the law as identified in *Lopez* and other Supreme Court and Seventh Circuit precedent to determine whether the regulation of a particular activity is covered under the Commerce Clause.

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

Response: The proper analysis to use in determining whether the President has exceeded Executive authority is contained in the Supreme Court decision of *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952). If confirmed, and if I were presented with this legal issue, I would apply this analysis to assessing the legality of any presidential executive orders or actions.

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 defined rights and liberties as "fundamental" for purposes of Due Process Clause protection when the right or liberty is "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 [it was] sacrificed."

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

Response: The Supreme Court has held that a classification is subject to heightened scrutiny under the Equal Protection Clause when the classification involves a suspect class, such as race, alienage, national origin, or gender. Courts will also apply strict scrutiny where laws impinge on a fundamental constitutional 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 expectation whether the use of racial preferences will no longer be necessary in public higher education, at any time in the future. If confirmed, I will follow the controlling precedent of the Supreme Court, including *Grutter* and *Fisher v. University of Texas at Austin, et al.*, 570 U.S. ____ (2013), on the appropriate use of racial preferences in public higher education.