

Response of Beth Labson Freeman
Nominee to be United States District Judge for the Northern District of California
To the Written Questions of Senator Ted Cruz

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: My judicial philosophy, over the past 12 years that I have served as a state trial court judge, has been grounded in my commitment to the impartial adherence to the rule of law and binding precedent. I treat all litigants with fairness and respect. This means that I exercise judicial restraint in all matters by deciding only those issues in controversy and applying applicable precedent. I have not studied the judicial philosophies of the Justices of the Supreme Court and thus, I am unable to identify a Justice whose judicial philosophy is analogous to my own.

Do you believe that originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original meaning, or some other form)?

Response: If I am confirmed to be a district court judge and I am faced with a Constitutional question, my obligation would be to determine whether there is binding precedent from the Supreme Court or the Court of Appeals for my circuit and to apply that precedent. One example of a binding precedent where the Supreme Court has interpreted the Constitution using originalism is *District of Columbia v. Heller*, 554 U.S. 570 (2008).

If a decision is precedent today while you are going through the confirmation process, under what circumstances would you overrule that precedent as a judge?

Response: If I am confirmed as a district court judge, I will be bound by controlling precedent and I would 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: *Garcia v. San Antonio Metro Transit Auth.* is binding precedent. If confirmed as a district court judge, I would be bound by and would follow the Supreme Court's decision in *Garcia v. San Antonio Metro Transit Auth.*

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

Response: The Supreme Court, in *United States v. Lopez*, 514 U.S. 549, 558-559 (1995), identified three general categories of activity that Congress may regulate under its Commerce Clause power: (1) the use of channels of interstate commerce, (2) instrumentalities of interstate commerce and persons or things in interstate commerce, and (3) activities that substantially affect interstate commerce. In *United States v. Lopez*, *supra*, and *United States v. Morrison*, 529 U.S. 598 (2000) the Supreme Court has also articulated limitations to the reach of the Commerce Clause to certain non-economic activities. If confirmed as a district court judge and presented with a challenge to the constitutionality of a statute on the grounds that it impermissibly extended to non-economic activity, I would research the issue thoroughly and apply controlling precedent in making my ruling.

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

Response: The Supreme Court has recognized that a President's authority to issue executive orders or executive actions must "stem either from an act of Congress or from the Constitution itself." *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952). If I were to be confirmed and confronted with such an issue, I would review all applicable precedent from the Supreme Court and apply it to the case before me.

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

Response: The Supreme Court has recognized certain rights as "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 I were to be confirmed as a district court judge, I would look to Supreme Court precedent to determine if the right in question had been deemed to be fundamental. If the Supreme Court had not addressed the issue, I would look to the Ninth Circuit Court of Appeals and I would apply binding precedent.

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

Response: According to Supreme Court precedent, a classification should be subjected to heightened scrutiny under the Equal Protection Clause when it differentiates based on race, alienage, national origin, or gender. Additionally, heightened scrutiny should be

applied when a classification burdens a right the Court has identified as “fundamental,” such as the right to vote, *e.g.*, *City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 440 (1985); *Mass. Bd. of Retirement v. Murgia*, 427 U.S. 307, 312 (1976).

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: If confirmed, I would be bound by *Grutter* and all other Supreme Court precedents on the issue of racial preferences in public higher education, including *Fisher v. Univ. of Texas at Austin*, 133 S. Ct. 2411 (2013), regardless of any personal views I might have.