

**Responses of Darrin P. Gayles,
Nominee, United States District Judge for the Southern District of Florida
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: I believe that judges must decide each case on its own merits, based on the facts and applicable law, and I have done so in the ten years I have served as a Florida state judge. Judges must apply the law faithfully and impartially, and must at all times maintain the dignity of the court. I have not sufficiently studied the opinions of the justices from the Warren, Burger, and Rehnquist Courts to be able to determine which justice's philosophy is most analogous with mine.

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: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court interpreted the Second Amendment by looking to the normal and ordinary meaning of words as they were understood at the time of the Amendment's ratification. If confirmed, I would interpret the Constitution consistent with such guidance provided by the Supreme Court in *Heller* and all Supreme Court and Eleventh Circuit 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, I will faithfully follow Supreme Court and Eleventh Circuit 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: If confirmed, I would follow the Supreme Court's decision in *Garcia* as well as other related Supreme Court and Eleventh Circuit precedent regarding state sovereign interests. See, e.g., *Printz v. United States*, 521 U.S. 898 (1997); *New York v. United States*, 505 U.S. 144 (1992).

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

Response: The Supreme Court has addressed the scope of, and limitations on, Congress' regulation of non-economic activity pursuant to the Commerce Clause in *United States v. Lopez*, 514 U.S. 549 (1995), *United States v. Morrison*, 529 U.S. 598 (2000), and *Gonzales v. Raich*,

545 U.S. 1 (2005). In his concurring opinion in *Raich*, Justice Scalia recognized that Congress may regulate noneconomic activity if the regulation is a necessary part of a more general regulation of interstate commerce. See *Raich* at 37. If confirmed, I would follow all Supreme Court and Eleventh Circuit precedent regarding Congress' power under the Commerce Clause.

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

Response: In *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952), the Supreme Court held that the President's authority to issue an executive order or take executive actions "must stem either from an act of Congress or from the Constitution itself." If confirmed, I would follow Supreme Court and Eleventh Circuit precedent to resolve questions regarding executive orders and actions.

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

Response: A right is fundamental for purposes of the substantive due process doctrine if it is specifically protected by the Bill of Rights or if it is "objectively, deeply rooted in this Nation's history and tradition." *Washington v. Glucksberg*, 521 U.S. 702, 720-721 (1997) (internal quotations and citations omitted). If confirmed, I would follow Supreme Court and Eleventh Circuit precedent to determine whether a right is fundamental for purposes of substantive due process.

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

Response: Because legal classifications, such as race, alienage, and national origin, are seldom relevant to the achievement of any legitimate state interest, such classifications are subjected to strict scrutiny. See *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440 (1985). Other classifications, including gender and illegitimacy, require intermediate scrutiny. *Id.* at 440-41. If confirmed, I would follow Supreme Court and Eleventh Circuit precedent in deciding all issues under the Equal Protection Clause.

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 expectations regarding the future use of racial preferences in public higher education. If confirmed, I would follow *Grutter*; *Fisher v. University of Texas at Austin*, 133 S. Ct. 2411 (2013); and other Supreme Court and Eleventh Circuit precedent regarding the consideration of race in public higher education.