

Questions for the Record
Senator Ted Cruz

Haywood S. Gilliam, Jr.

Nominee: United States District Court for the Northern District of California

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: As a district judge, I would approach every case before me without prejudice, identify controlling precedent and neutrally apply it, and resolve issues before me on the narrowest basis possible. I also believe that it is critical for a judge to treat all participants in the judicial system, including litigants, counsel, jurors, witnesses and court staff, with respect and courtesy, and to ensure that all parties in a case have the opportunity to have their arguments heard and considered fully and fairly. Because I have not studied the judicial philosophies of the members of the Warren, Burger and Rehnquist Courts, I cannot say which of the Justices' philosophies is most analogous to the approach I would take if confirmed, as described above.

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: The Supreme Court has used originalism to interpret the Constitution in certain instances. For example, in *District of Columbia v. Heller*, 554 U.S. 570, 576-77 (2008), the Supreme Court considered the meaning "known to ordinary citizens in the founding generation" in interpreting the Second Amendment. If confirmed, I would follow this and all applicable Supreme Court and Ninth Circuit precedent in interpreting the Constitution.

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 not have the power to overrule precedent under any circumstances.

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 be bound to follow *Garcia* and all other precedent of 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: In *United States v. Lopez*, 514 U.S. 549, 558 (1995), the Supreme Court described “three broad categories of activity that Congress may regulate under its commerce power.” Under *Lopez*, Congress (1) “may regulate the use of the channels of interstate commerce”; (2) may “regulate and protect the instrumentalities of interstate commerce, or persons and things in interstate commerce”; and (3) may “regulate those activities having a substantial relation to interstate commerce.” *Id.* at 558-59. The Court has held that “when a general regulatory statute bears a substantial relation to commerce, the *de minimis* character of individual instances arising under that statute is of no consequence.” *Gonzales v. Raich*, 545 U.S. 1, 17 (internal quotations and citations omitted). Justice Scalia’s concurrence in *Raich* posited 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 would follow this and all other applicable Supreme Court and Ninth Circuit precedent in cases involving 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 action “must stem from either an act of Congress or from the Constitution itself.” If confirmed, I would follow this and all other applicable Supreme Court and Ninth Circuit precedent in cases involving this issue.

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

Response: The Supreme Court has found 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, 720-21 (1997) (internal citations and quotations omitted). If confirmed, I would follow this and all other applicable Supreme Court and Ninth Circuit precedent in cases involving this issue.

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 to classifications based on factors such as race, alienage, national origin, gender or illegitimacy. See *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440-41 (1985). If confirmed, I would follow this and all other applicable Supreme Court and Ninth Circuit precedent in deciding cases involving this issue.

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 addressed the use of racial preferences in public higher education in cases such as *Grutter* and *Fisher v. Univ. of Texas at Austin*, 133 S. Ct. 2411 (2013).

If confirmed, I would follow this and all other applicable Supreme Court and Ninth Circuit precedent in cases involving this issue, without regard to any personal views or expectations I might have.