

Senator Ted Cruz
Questions for the Record

Diane J. Humetewa
Nominee: U.S. District Judge for the District of Arizona

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: If confirmed, the judicial philosophy that I hope to embody is one of applying the law and precedent to each matter and by demonstrating respect and patience with the parties and all who appear in my court room. I have not studied the philosophies of individual Justices from the Warren, Burger or Rehnquist Courts so I am unable to comment on whether they have an analogous 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: Recently the Supreme Court analyzed the original public meaning of the Constitution in several cases, including in *District of Columbia v. Heller*, 554 U.S. 570 (2008), to determine whether or not a statute was unconstitutional. I will adhere to that 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: As a federal district court judge, it would be inappropriate for me to overrule Supreme Court or Ninth Circuit precedent and I would not do so 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: I will apply the Supreme Court precedent, including the *Garcia*, case in analyzing questions of federal and state powers. I do not believe it would be appropriate for me to agree or disagree with any binding Supreme Court precedent.

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

Response: If confirmed, I will apply the Supreme Court precedent, including *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), which analyze the Congress’ Commerce Clause authority.

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

Response: The Supreme Court's decision in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), provides precedent for determining the President's authority to issue executive orders or take executive action. The authority must derive from the Constitution or be authorized, expressly or impliedly, by Congress.

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 that right is "deeply rooted in the Nation's history and traditions," and "implicit in the concept of ordered liberty" such that "neither liberty nor justice would exist if they were sacrificed." See *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997), citing *Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934); *Palko v. Connecticut*, 302 U.S. 319, 325, 326 (1937).

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

Response: Heightened scrutiny under the Equal Protection Clause should be applied when a classification burdens a fundamental right or when it involves categories such as race, gender, national origin or alienage. See *City of Cleburne v. Cleburne Living Center Inc.*, 473 U.S. 432 (1985).

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 do not have any personal expectations regarding this issue. If confirmed, I will apply *Grutter*, *Fisher v. University of Texas at Austin*, 133 S.Ct. 2411 (2013), and other applicable Supreme Court precedent to issues involving racial preference in public higher education.