

Response of Joseph F. Leeson, Jr.
Nominee, United States District Judge for the Eastern District of Pennsylvania
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: If confirmed as a district court judge, my judicial philosophy would be to commit to the rule of law with a fair and impartial process, and a strict adherence to precedent. While I have read opinions from the Warren, Burger and Rehnquist Courts, I have not studied the individual Justices sufficiently to enable me to characterize a particular Justice's philosophy as analogous to my own.

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 as a district court judge, I would follow all binding precedent of the Supreme Court and the Third Circuit Court of Appeals with respect to interpreting the Constitution. The Supreme Court has explained that public understanding of a text around the time of its enactment has a critical role in constitutional interpretation. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008). I would follow the *Heller* decision and all other binding 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 as a district court judge, I would not and could not overrule precedent. I would follow precedent established by the Supreme Court and the Third Circuit Court of Appeals.

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: This statement is part of a majority opinion of the Supreme Court in a case that has not been explicitly overruled. If confirmed as a district court judge, I would apply and follow the Supreme Court's decision in *Garcia* as well as other related Supreme Court and Third Circuit Court of Appeals precedents regarding state sovereign interests.

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 in *United States v. Lopez*, 514 U.S. 549 (1995) and in *United States v. Morrison*, 529 U.S. 598 (2000), held that the federal laws under consideration were unconstitutional

because they exceeded congressional power under the Commerce Clause, and the Supreme Court noted the non-economic nature of the activity being subjected to federal regulation in holding those laws unconstitutional. However, neither of these two Supreme Court decisions held that the Commerce Clause may never extend to non-economic activity. In *Gonzales v. Raich*, 545 U.S. 1 (2005), Justice Scalia's concurring opinion referenced the Necessary and Proper Clause in conjunction with the Commerce Clause to indicate that "Congress may regulate even non-economic 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 as a district court judge, I would follow Supreme Court and Third Circuit Court of Appeals precedent in deciding cases relating to the Commerce Clause.

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

Response: The power of the Executive Branch of the federal government is conferred by both the Constitution and by specific acts of Congress. If a President were to exceed the scope of lawful power, a federal court presented with a justiciable case or controversy would be empowered to enjoin such unlawful actions, as established by a series of cases including *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952) and *Medellin v. Texas*, 552 U.S. 491 (2008). If confirmed as a district court judge, I would follow Supreme Court and Third Circuit Court of Appeals precedent in this and all other areas of the law.

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

Response: The Supreme Court has determined that a right may be fundamental if it is expressly stated in the Bill of Rights, or if it is "deeply rooted in this Nation's history and tradition". *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997) (internal citations and quotations omitted). If confirmed as a district court judge, I would follow Supreme Court and Third Circuit Court of Appeals precedent in deciding cases regarding fundamental rights.

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

Response: The Supreme Court has held that certain classifications, such as race, religion, gender, alienage, national origin or classifications that burden a fundamental right, are subject to a higher level of scrutiny under the Equal Protection Clause. *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432 (1985). If confirmed as a district court judge, I will follow Supreme Court and Third Circuit Court of Appeals precedent in determining when to apply heightened scrutiny 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 continued use or lack of use of racial preferences in public higher education. If confirmed as a district court judge, and if an issue concerning racial preferences were before me, I would apply *Grutter* and other relevant precedent, including *Fisher v. University of Texas at Austin*, 133 S. Ct. 2411 (2013), to the factual record before me.