

Questions for the Record
Senator Ted Cruz

Responses of Rosemary Marquez
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, my judicial philosophy would be to treat all who enter the courthouse with courtesy and respect and to apply the law to the facts of each case fairly and impartially. I would respect precedent, and limit rulings to resolve only those issues properly before me. I have not studied in significant depth the Justices’ judicial philosophies, so I am not able to say whose philosophy is most analogous to 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: The United States Supreme Court has used originalism to interpret constitutional provisions. One example of a binding decision where the Supreme Court has interpreted the Constitution using original public meaning is *District of Columbia v. Heller*, 554 U.S. 570 (2008). If confirmed as a federal district judge, I would apply all relevant precedents when deciding cases, including the United States Supreme Court’s precedents that rely on original public meaning and those that rely on original intent.

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: There are no circumstances under which I would overrule the precedents of the United States Supreme Court or the United States Court of Appeals for the Ninth Circuit if I were confirmed as a federal district judge.

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 I were confirmed as a federal district judge, I would apply *Garcia* and all other binding precedents of the United States Supreme Court regardless of my personal views, if any.

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

Response: The United States Supreme Court has, “identified three broad categories of activity that Congress may regulate under its commerce power.” *United States v. Lopez*, 514 U.S. 549,

558 (1995). According to *Lopez*, the federal government first “may regulate the use of the channels of interstate commerce,” second “may regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce” and third may “regulate those activities having a substantial relation to interstate commerce.” *Id.* at 558-59. The Supreme Court highlighted the non-economic nature of the activity being regulated in both, *Lopez* and *United States v. Morrison*, 529 U.S. 598 (2000), when it struck down the statute at issue in those cases. If confirmed, I would follow the binding precedent of the United States Supreme Court.

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

Response: The President’s authority to issue executive orders and take executive actions is limited by the Constitution and federal statutes. “The President’s power, if any, to issue the order 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). Therefore, the judicially enforceable limits on the President’s ability to issue executive orders or executive actions apply to those instances when the order or action is not authorized by Congress or the Constitution.

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

Response: The United States Supreme Court has held that a right is “fundamental” for purposes of the substantive due process doctrine where “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 as a federal district judge, I would follow all binding precedents of the United States Supreme Court and the Ninth Circuit Court of Appeals, including precedents regarding whether a right is “fundamental” for purposes of the substantive due process doctrine.

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, gender or illegitimacy. The Supreme Court has also explained that heightened scrutiny should be applied when a classification burdens a right the Court has identified as fundamental.

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 abide by *Grutter* and *Fisher v. University of Texas at Austin*, 133 S.Ct. 2411 (2013), and all other Supreme Court precedents regardless of any personal views or expectations.