

Questions for the Record
Senator Ted Cruz

Response from Salvador Mendoza, Jr.
Nominee, U.S. District Court Judge for the Eastern District of Washington

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: My judicial philosophy as a state judge is guided by the principles of patience, respect for the rule of law, and humility. I decide cases by applying the statutory authority and case precedent to the facts presented. If confirmed, I would continue to follow this philosophy. With regard to the philosophies of the Supreme Court justices, I have not studied them. As such, I am unaware of whose philosophy would be 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: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), for example, the Supreme Court looked to the constitutional text in its original common meaning at the time of its adoption. I would follow this and all other Supreme Court and Ninth Circuit binding precedent on the principles of constitutional interpretation.

If a decision is precedent today while you’re going through the confirmation process, under what circumstances would you overrule the precedent as a judge?

Response: None. If I am confirmed as a District Court Judge, I could not and would not overrule a binding case precedent.

Explain whether you agree that “State sovereign interests...are more properly protected by the 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: The quote is from the holding in the Supreme Court binding precedent of *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528 (1985) regarding the extent of Congress’ power under the Commerce Clause. I would follow *Garcia* and all other binding case precedent without regard to whether I personally agree or disagree with the decision.

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

Response: In evaluating Congress’ power to regulate non-economic activity, I would apply the Supreme Court case precedent as stated in cases such as *United States v. Lopez*, 514 U.S. 549

(1995). In that case, the Court indicated that there are, "... three broad categories of activity that Congress may regulate under its commerce power." *Id.* at 558. "First, Congress may regulate the use of the channels of interstate commerce. Second, Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities. Finally, Congress' commerce authority includes the power to regulate those activities having a substantial relation to interstate commerce." *Id.* at 558-59 (internal citations omitted); *see also United States v. Morrison*, 529 U.S. 598 (2000).

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

Response: The Supreme Court has indicated that when the President issues executive orders or actions that are not authorized by an act of Congress or under the Constitution, the judiciary can invalidate said action as exceeding the President's authority. *See Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952). If confirmed and asked to decide the issue, I would follow this and all other binding precedent.

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

Response: For purposes of substantive due process analysis, the Supreme Court has held that a right is "fundamental" when it is "...objectively, deeply rooted in the Nation's history and tradition, ... and implicit in the concept of ordered liberty." *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (internal citation and quotation marks omitted). I would apply this precedent and all other Supreme Court precedents in that determination.

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

Response: The Supreme Court has applied heightened scrutiny under the Equal Protection Clause to classifications of gender, race, religion, national origin, and ethnicity. Additionally, the Court has also applied heightened scrutiny to classifications when legislation encroaches on a "fundamental" right. *See, e.g., City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 439-41 (1985). I would apply this Supreme Court holding all other case precedents if confirmed.

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 apply the Supreme Court holding in *Grutter v. Bollinger*, 539 U.S. 306 (2003), and all other binding case precedents on affirmative action in public higher education regardless of what my personal expectation might be.