

**Response of Laurie J. Michelson
United States District Judge Nominee for the Eastern District of Michigan
To Questions for the Record from Senator Ted Cruz**

Describe how you would characterize your judicial philosophy, and identify which US Supreme Court Justice’s judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: My judicial philosophy is to fairly and impartially decide the issues before me based on the specific facts of the case and controlling law. While I review Supreme Court decisions for substantive guidance, I do not have sufficient familiarity with the body of decisions of any particular Justice of the Warren, Burger, or Rehnquist Courts to identify a single Justice whose judicial philosophy might be described as most analogous with 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: If I am fortunate enough to be confirmed as a district judge, then in deciding cases involving constitutional interpretation, my obligation would be to determine whether there is binding precedent from the United States Supreme Court and United States Court of Appeals for the Sixth Circuit and to follow that precedent, including where the appellate courts have interpreted the Constitution using originalism. *See District of Columbia v. Heller*, 554 U.S. 570 (2008) (applying original public meaning).

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: A fundamental responsibility of a district judge is to follow controlling precedent. If confirmed, there is no circumstance in which I would overrule controlling precedent.

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 by and would follow the Supreme Court’s decision in *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985), without regard to any personal agreements or disagreements with its reasoning.

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 found that the Commerce Clause allows congressional regulation of three general categories of activity: (1) the use of the channels of interstate commerce; (2) the instrumentalities of interstate commerce; and (3) activities having a substantial relation to interstate commerce. *United States v. Lopez*, 514 U.S. 549, 558-559 (1995). The Supreme Court has emphasized the non-economic nature of regulated activity in invalidating certain legislation as exceeding Congress's commerce power, *see, e.g., United States v. Morrison*, 529 U.S. 598 (2000) (emphasizing the non-economic nature of the activity in holding that the Commerce Clause did not provide Congress with authority to enact the civil remedy provisions of the Violence Against Women Act), *Lopez*, 514 U.S. at 567 (holding that Congress exceeded its Commerce Clause power by criminalizing the possession of firearms in a school zone because such conduct was not an economic activity substantially affecting interstate commerce). The Supreme Court has also, however, concluded that Congress may regulate non-economic activity where such regulation is "an essential part of a larger regulation of economic activity," *Lopez*, 514 U.S. at 561; *Gonzales v. Raich*, 545 U.S. 1, 34 (Scalia, J., concurring). If confirmed, I would follow these precedents and any other binding precedent from the Supreme Court and the United States Court of Appeals for the Sixth Circuit on the issue of Congress' Commerce Clause power.

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

Response: The Supreme Court recently reiterated that "[t]he President's authority to act, as with the exercise of any governmental power, 'must stem either from an act of Congress or from the Constitution itself.'" *Medellin v. Texas*, 552 U.S. 491, 524 (2008) (quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952)). If confirmed, I would apply that precedent and any other relevant precedent of the United States Supreme Court and United States Court of Appeals for the Sixth Circuit defining the limits of a President's power.

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

Response: If I was confirmed and a case presenting this issue came before me, I would look to Supreme Court and Sixth Circuit precedent to determine whether they had held that a particular right was "fundamental." *See, e.g., Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (explaining that "the Due Process Clause specially protects those fundamental rights and liberties which 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.'" (citations omitted)).

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

Response: The Supreme Court has held that “strict scrutiny” applies to classifications based upon “race, alienage, or national origin,” *City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 440 (1985), and has applied intermediate scrutiny to classifications based upon gender and illegitimacy, *id.* at 440-41. I will apply this precedent and any other relevant precedent from the Supreme Court and the Sixth Circuit.

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: Since *Grutter*, the Supreme Court has recently addressed racial preferences in public higher education in *Fisher v. University of Texas at Austin*, 133 S. Ct. 2411 (2013). If confirmed, I would follow the Supreme Court’s precedents on this issue without regard to any personal views or expectations.