

**Response of Raymond P. Moore
Nominee to be United States District Judge for the District of Colorado
to the Written Questions of Senator Ted Cruz**

Judicial Philosophy

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 philosophy would be to treat all litigants fairly and with both patience and respect, to decide matters coming before the court with transparency, to decide matters narrowly by ruling only on those issues actually before the court, and to decide matters with fidelity to the principle of stare decisis. I have not studied the Justices over the years with an eye towards identifying their judicial philosophies, in part because their role as Justices of the highest court of the land differs from that of a District Judge. I doubt that I would wholly subscribe to the entire philosophy of any one Justice.

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: I believe that the Constitution is not an organic document whose meaning constantly changes with the times. The Constitution should be interpreted according to the plain meaning of its terms. If the plain meaning is uncertain or cannot be discerned, originalism may be a proper part of an analysis to attempt to determine the intent of the framers under established rules of construction.

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 United States District Court Judge, I would have no authority or power to overrule precedent from the U.S. Supreme Court or Tenth Circuit Court of Appeals and would not seek to do so under any circumstances.

Congressional Power

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 pronouncement of the U.S. Supreme Court stands as precedent for District Court Judges. As such, my personal feelings towards such issue would have no place in any decision which I may be called upon to make in this regard.

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

Response: The U.S. Supreme Court has held and determined that Congress may regulate three broad categories of activity under its commerce power. In *United States v. Lopez*, 514 U.S. 549, 558 (1995), the Court identified these categories of activities as: (i) “the use of the channels of interstate commerce,” (ii) “the instrumentalities of interstate commerce,” and (iii) “activities having a substantial relation to interstate commerce.” Activity which does not fall within these categories is beyond Congress’s power to regulate. As to the place of “non-economic activity” in this regulatory scheme, Justice Scalia has observed that “Congress may regulate even noneconomic local activity if that regulation is a necessary part of a more general regulation of interstate commerce.” *Gonzales v. Raich*, 545 U.S. 1, 37 (2005) (Scalia, J., concurring).

Presidential Power

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

Response: The President and the Executive Branch are limited by the authority and powers vested in that Office and Branch by the U.S. Constitution. These limitations are judicially enforceable.

Individual Rights

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

Response: A right is “fundamental” when it is deeply rooted in the history or tradition of the United States. And from a district court perspective, a right is “fundamental” when it has been so characterized by the U.S. Supreme Court or the applicable Court of Appeals.

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

Response: A classification should be subject to heightened scrutiny when it involves race, gender or other suspect classification or when the classification burdens fundamental rights such as the right to vote.

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 specific expectation as to when the use of racial preferences in public higher education will no longer be necessary in the sense described in *Grutter*. As a nation we have

been making steady progress on this front, and I would hope that it would be the case that preferences will not be necessary in 15 years. However, the actual determination will need to be based on the facts as are developed in such cases as come before the Supreme Court.