

Response of Brian Morris
Nominee for the United States District Court for the District of Montana
to Questions for the Record from Senator Ted Cruz
“Judicial Nominations” Hearing – 7/24/13

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 seeks to apply the law fairly to all litigants. The courts have a limited role in our constitutional system and I recognize the need to issue narrow rulings that resolve the particular issues presented in a case without the need to comment on extraneous matters. I had the privilege of serving as a law clerk to Chief Justice William H. Rehnquist. This opportunity also exposed me directly to the work and work habits of other members of the United States Supreme Court. I have sought to model the way I approach deciding cases, the limited scope of my opinions, and importance of judicial efficiency from what I observed of Chief Justice Rehnquist.

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 looked to original intent and original public meaning to interpret various constitutional provisions when the plain language has proven ambiguous or insufficient. I would apply all relevant precedents when deciding cases, including the United States Supreme Court’s precedents that rely on original intent and original public meaning, if I were confirmed as a federal district judge.

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: As a federal district court judge, I would have no authority to overrule the precedents of the United States Supreme Court or of the United States Court of Appeals for the Ninth Circuit. There are no circumstances under which I would attempt to overrule the precedents of these courts 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: The excerpt from *Garcia v. San Antonio Metro Transit Authority* remains binding precedent and represents one form of protection of state sovereign interests. Other protections include express limits on federal power contained in the United States Constitution and judicial interpretations of the United States Constitution that have limited federal power. *See, e.g., Printz v. United States*, 521 U.S. 898 (U.S. 1997). If I were confirmed as a federal district court judge, I

would apply *Garcia* and all other decisions of the United States Supreme Court regardless of my own personal feelings.

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 recognized in *United States v. Lopez*, 514 U.S. 549 (1995), three broad categories of activity where Congress has the authority to regulate: (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." I would apply these precedents if called upon to review Congress's authority to regulate non-economic activity.

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

Response: The United States Supreme Court recognized the judicially enforceable limits on the President's power in *Youngstown Sheet and Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952). The United States Supreme Court determined that the President's power to issue executive orders or action "must stem either from an act of Congress or from the Constitution itself." I would apply these precedents if called upon to review the President's ability to issue executive orders or executive actions.

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

Response: The United States Supreme Court in *Washington v. Glucksberg*, 521 U.S. 702, 721-22 (1997), described fundamental rights as those rights "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." (Quotations and internal citations omitted). The United States Supreme Court has recognized several fundamental rights for purposes of the substantive due process doctrine, including the right to marry, to have children, to direct the education and upbringing of one's children, and to marital privacy. *Glucksberg*, 521 U.S. at 720. I would apply these precedents if I were confirmed as a federal district judge.

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

Response: The United States Supreme Court has determined that a classification should be subjected to heightened scrutiny under the Equal Protection Clause when it involves a fundamental right, such as the right to vote or to travel, or when it involves a suspect class, such as race, alienage, national origin, or gender. I would apply these precedents if I were confirmed as a federal district judge.

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 expectations on this issue. If confirmed, I will apply all relevant precedents to any case that might involve racial preferences in public higher education.