

Questions for Judicial Nominees
Senator Ted Cruz

Luis Felipe Restrepo
Nominee – U.S. Circuit Judge for
the Third Circuit

Judicial Philosophy

1. Describe how you would characterize your judicial philosophy.

Response: My judicial philosophy is based on a firm commitment to the rule of law and treating all litigants with respect and dignity. During my 2-year tenure as a United States District Judge and my previous 7 years as a United States Magistrate Judge, my record demonstrates a commitment to applying Supreme Court and Third Circuit precedent to the facts established by the evidence.

2. How does a responsible judge interpret constitutional provisions, such as due process or equal protection, without imparting his own values to these provisions?

Response: Fidelity to the doctrine of *stare decisis* is the cornerstone of our judicial system, inspiring confidence and ensuring a predictable application of the law. A responsible judge does not impose his/her values on constitutional provisions; rather, the judge applies Supreme Court and Circuit precedent to his/her analysis of the established facts regardless of the judge's personal view.

3. With the assumption that you will apply all the law announced by the Supreme Court, please name a Warren Court, Burger Court, and Rehnquist Court precedent that you believe was wrongly decided—but would nevertheless faithfully apply as a lower court judge. Why do you believe these precedents were wrongly decided?

Response: As a sitting District Court Judge I do not feel it appropriate to express my personal views about Supreme Court decisions. I apply Supreme Court precedent regardless of whether I think such precedent was wrongly decided and would continue to do so should I be confirmed as a Circuit Judge.

4. Which sitting Supreme Court Justice do you most want to emulate?

Response: Although I have great respect for the Justices of the Supreme Court I am not in a position to identify a single justice I would most want to emulate.

Among the traits I most respect in judges are humility, patience, legal acumen and respect for the rule of law.

5. 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, other)?

Response: The Supreme Court in *District of Columbia v. Heller*, 554 U.S. 570 (2008) applied original public meaning to their interpretation of the Second Amendment. I would faithfully apply *Heller* and all other binding precedent to issues of constitutional interpretation.

6. What role, if any, should the constitutional rulings and doctrines of foreign courts and international tribunals play in the interpretation of our Constitution and laws?

Response: None.

7. What are your views about the role of federal courts in administering institutions such as prisons, hospitals, and schools?

Response: The role of federal courts in administering institutions such as prisons, hospitals and schools is governed by the Constitution, applicable statutes and Supreme Court and Circuit precedent.

8. What are your views on the theory of a living Constitution, and is there any conflict between the theory of a living Constitution and the doctrine of judicial restraint?

Response: I do not subscribe to the theory of a living Constitution. Constitutional issues should be decided by looking to the text of the Constitution and applying binding Supreme Court and Circuit precedent.

9. What is your favorite Supreme Court decision in the past 10 years, and why?

Response: I do not have a favorite Supreme Court decision of the past 10 years.

10. Please name a Supreme Court case decided in the past 10 years that you would characterize as an example of judicial activism.

Response: As a sitting District Judge I do not feel it appropriate to express my personal views about Supreme Court decisions. Supreme Court opinions are

binding regardless of whether a judge takes the view that the opinion is an example of judicial activism.

11. What is your definition of natural law, and do you believe there is any room for using natural law in interpreting the Constitution or statutes?

Response: However defined, natural law is not precedent in interpreting the Constitution or statutes.

Congressional Power

12. 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: As a nominee to the Third Circuit Court of Appeals and a sitting District Judge I do not feel it appropriate to express my personal views about Supreme Court decisions. *Garcia* is binding precedent, and I would follow it regardless of my personal views.

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

Response: In his concurring opinion in *Gonzales v. Raich*, 545 U.S. 1, 37 (2005), Justice Scalia summarized the relevant Supreme Court precedent as follows: “Congress may regulate even noneconomic activity if that regulation is a necessary part of a more general regulation of interstate commerce.” Justice Scalia further noted: “Congress may regulate noneconomic intrastate activities only where the failure to do so ‘could ...undercut’ its regulation of interstate commerce.” *Id.* at 38. As a District Judge and if confirmed as a Circuit Judge, I would faithfully follow the Supreme Court’s decisions in this area including *United States v. Lopez*, 514 U.S. 549 (1995), and *United States v. Morrison*, 529 U.S. 598 (2000).

14. What limits, if any, does the Constitution place on Congress’s ability to condition the receipt and use by states of federal funds?

Response: The Supreme Court has “... recognized limits on Congress’s power under the Spending Clause to secure state compliance with federal objectives.”

See *NFIB v. Sebelius* 132 S. Ct. 2566, 2602 (2012). In *South Dakota v. Dole*, 483 U.S. 203, 207 (1987), the Supreme Court acknowledged that, per the language of Constitution, “the exercise of the spending power must be in pursuit of ‘the general welfare.’” The Supreme Court, in *South Dakota v. Dole*, also acknowledged that: (1) “if Congress desires to condition the States’ receipt of federal funds, it ‘must do so unambiguously . . . , enabl[ing] the States to exercise their choice knowingly, cognizant of the consequences of their participation;’” (2) “conditions on federal grants might be illegitimate if they are unrelated ‘to the federal interest in particular national projects or programs;’” and (3) “other constitutional provisions may provide an independent bar to the conditional grant of federal funds.” *Id.* at 207-08.

15. Is Chief Justice Roberts’ decision in *NFIB v. Sebelius*, 132 S. Ct. 2566 (2012), on the Commerce Clause and Necessary and Proper Clause binding precedent?

Response: Given that this question is currently being litigated I do not think it would be appropriate for me, as a sitting District Court Judge to respond. I can assure the Committee that I will faithfully apply all binding United States Supreme Court and Circuit precedent should I have to address this issue as a judge.

Presidential Power

16. 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 executive actions is limited by the Constitution and federal statutes. If the President takes action that is not authorized by the Constitution or an act of Congress and a challenge to that action is properly brought, then a federal judge must invalidate the action as exceeding Presidential authority. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

17. Does the President possess any unenumerated powers under the Constitution, and why or why not?

Response: A judge considering this issue should look to *Youngstown* and other relevant Supreme Court and Circuit precedents consistent with the facts presented.

Individual Rights

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

Response: In discussing the “established method of substantive-due process analysis,” the Supreme Court has observed that “Due Process Clause specifically 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.’” *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (citations omitted). As a District Judge and if confirmed as a Circuit Judge, I would apply this and all other applicable precedent.

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

Response: In accordance with Supreme Court precedent, a classification should be subjected to heightened scrutiny under the Equal Protection Clause when it classifies based on race, alienage, national origin or gender. The Court has also explained that heightened scrutiny should be applied when a classification burdens a right the Court has identified as “fundamental,” such as the right to vote.

20. 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: As a District Judge and if confirmed as a Circuit Judge I would follow and apply *Grutter* and all Supreme Court precedents concerning this issue regardless of any individual expectations.

21. To what extent does the Equal Protection Clause tolerate public policies that apportion benefits or assistance on the basis of race?

Response: The Supreme Court has applied a “strict scrutiny” analysis when reviewing public policies that apportion benefits or assistance on the basis of race. See *Fisher v. University of Texas at Austin*, 133 S. Ct. 2411 (2013), and *Grutter v. Bollinger*, 539 U.S. 306 (2003).

22. Does the Second Amendment guarantee an individual right to keep and bear arms for self-defense, both in the home and in public?

Response: An individual’s Second Amendment right to keep and bear arms in the home for self-defense was addressed by the Supreme Court in *District of Columbia v. Heller*, 554 S. Ct. 570 (2005) and *McDonald v. Chicago* 561 U.S. 742 (2010). The Supreme Court has yet to consider the issue of whether an

individual has a Second Amendment right to keep and bear arms for self-defense in public. Given that I am a sitting District Court Judge and a nominee to the Third Circuit I do not believe that I should comment on this issue. As a District Court Judge and if confirmed as a Circuit Judge I would apply binding Supreme Court and Circuit precedent to any Second Amendment question.