

**Responses of Robin L. Rosenberg
Nominee, United States District Judge for the Southern District of Florida
to the Written Questions of Senator Ted Cruz**

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 court judge for the past eight years has been to be fair, impartial, unbiased, open-minded and respectful of all persons who appear in the courtroom. I employ case management techniques to ensure that cases move efficiently through the system so that every litigant receives justice and finality in a fair and timely fashion. I do not possess sufficient knowledge of the judicial philosophy of the Justices who served on the Warren, Burger, or Rehnquist Courts to comment as to whether their philosophies are 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: The Supreme Court has utilized originalism to interpret the Constitution. For example, in *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court has looked to original public meaning to interpret the Constitution. If confirmed, I would follow *Heller* and all other binding Supreme Court and Eleventh Circuit precedent concerning constitutional interpretation.

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: There are no circumstances in which I would overrule binding precedent as a United States District Court 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: If confirmed as a United States District Court Judge, I would follow the Supreme Court's decision in *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985) and all other binding precedent. My personal views never come into play in the judicial decision making process.

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

Response: If confirmed as a United States District Court Judge, I would apply the controlling precedent. My personal views never come into play in the judicial decision making process. The United States Supreme Court in *United State v. Lopez*, 514 U.S. 549, 558 (1995) identified three

general categories of activity that Congress may regulate under its Commerce Clause power: (1) the use of the channels of interstate commerce; (2) instrumentalities of interstate commerce and persons or things in interstate commerce; and (3) activities that substantially affect interstate commerce. In *United States v. Lopez*, *supra*, and *United States v. Morrison*, 529 U.S. 598 (2000), the United States Supreme Court has also articulated limitations to the reach of the Commerce Clause to certain non-economic activity. In *Gonzales v. Raich*, 545 U.S. 1, 37 (2005), Justice Scalia's concurring opinion cited the Necessary and Proper Clause in connection with the Commerce Clause to opine that "Congress may regulate even non-economic local activity if that regulation is a necessary part of a more general regulation of interstate commerce."

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

Response: The United States Supreme Court held in *Medellin v. Texas*, 552 U.S. 491, 524 (2008) (quoting *Youngstown Sheet and Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952)) that the "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.'"

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

Response: A right is fundamental for purposes of the substantive due process doctrine when the right is "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) (internal citations and quotations omitted).

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

Response: Legislative classification based on race, alienage, national origin and gender or when "laws impinge on personal rights protected by the Constitution" require a heightened scrutiny analysis under the Equal Protection Clause. *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440 (1985).

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 do not have any expectations as to whether the use of racial preferences in public higher education will no longer be necessary in the future. If confirmed as a United States District Court Judge, I will follow *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003) and all other controlling precedent.