

Questions for the Record
Senator Ted Cruz

Responses by Brenda K. Sannes,
Nominee, U.S. District Judge for the Northern District of New York

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: I believe that a district judge should approach each case with an open mind; carefully and respectfully consider each party's position; faithfully apply binding precedent; and work diligently to issue decisions promptly. I am not familiar enough with the judicial philosophies of the Supreme Court Justices from the Warren, Burger or Rehnquist Courts to opine on which Justice's judicial philosophy is 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 confirmed as a district judge, I would follow the precedent of the Supreme Court and the United States Court of Appeals for the Second Circuit regarding the interpretation of the Constitution. The Supreme Court has stated that "*the public understanding* of a legal text in the period after its enactment or ratification" is a "critical tool of constitutional interpretation." *District of Columbia v. Heller*, 554 U.S. 570, 605 (2008) (emphasis in original).

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 district judge I would not, and could not, overrule 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 as a district judge, I would be bound to follow *Garcia*, without regard to any personal agreement or disagreement 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 Supreme Court has identified three general categories of regulation within Congress' Commerce Clause power. Congress may: (1) "regulate the channels of interstate commerce"; (2) "regulate and protect the instrumentalities of interstate commerce, and persons or things in interstate commerce"; and (3) "regulate activities that substantially affect interstate

commerce.” *Gonzales v. Raich*, 545 U.S. 1, 16-17 (2005); *see also United States v. Lopez*, 514 U.S. 549, 558-59 (1995). If confirmed as a district judge I would follow the Supreme Court and Second Circuit precedent regarding the limits of Congress’ Commerce Clause authority.

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

Response: The Supreme Court has stated that the President’s authority to act “must stem either from an act of Congress or from the Constitution itself.” *Medellin v. Texas*, 552 U.S. 491, 524 (2008); *see Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952). The Court has noted that the President’s authority is “at its maximum” when the President acts pursuant to an express or implied authorization of Congress; that the President can “only rely upon his own independent powers” when he acts without a congressional grant or denial of authority; and that the President’s power “is at its lowest ebb” when the President “takes measures incompatible with the expressed or implied will of Congress.” *Medellin*, 552 U.S. at 524-25. If confirmed as a district judge I would follow the Supreme Court and Second Circuit precedent defining the limits of executive action.

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

Response: The Supreme Court has stated that the Due Process Clause “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). If confirmed as a district judge I would follow the Supreme Court and Second Circuit precedent regarding whether a right is “fundamental” for purposes of the substantive due process doctrine.

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

Response: The Supreme Court has held that classifications by race and national origin are subject to strict scrutiny. *See City of Cleburne, Tex. v. Cleburne Living Center*, 473 U.S. 432, 440 (1985). Classifications based on alienage ordinarily are subject to strict scrutiny. *See Bernal v. Fainter*, 467 U.S. 216, 219-20 (1984). Classifications based upon gender and illegitimacy are subject to heightened review. *See Cleburne*, 473 U.S. at 440-41. If confirmed as a district judge I would follow Supreme Court and Second Circuit precedent in determining what classifications are subject to heightened scrutiny under the Equal Protection Clause.

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: If confirmed as a district judge I would follow the precedent established by the Supreme Court in *Grutter* and *Fisher v. Univ. of Tex. at Austin*, 133 S. Ct. 2411 (2013), and any applicable Second Circuit precedent. I do not know how the controlling precedent will evolve in the next fifteen years.