

Questions for the Record
Senator Ted Cruz

James A. Soto

Nominee: U.S. District Court Judge for the District of Arizona

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 is that a judge must always handle each case with an impartial and unbiased mind. A judge should treat all parties with respect and patience and be willing to give the legal arguments of all parties to a case serious legal consideration. A judge must apply the law as written and follow binding precedent. This is a cornerstone of our system of justice. I do not have sufficient information to state which Supreme Court justice on the Warren, Burger, or Rehnquist Courts has a judicial philosophy most analogous to my own.

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: My role as a judge in a case involving constitutional interpretation is to study the facts of the case before me and apply the applicable precedent to the case, including precedent which considers the original public meaning of the text, as the Supreme Court did in *District of Columbia v. Heller*, 554 U.S. 570 (2008), or the original intent of the drafters.

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, I would be bound by the precedent of the Supreme Court and the Ninth Circuit. I would not overrule any 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 to serve as a United States District Judge, I would be bound by the Supreme Court's decision in *Garcia* and subsequent decisions which identify constitutional limitations on congressional power. I would apply the holding in that case without regard to whether or not I personally agreed with the decision.

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

Response: In *Gonzales v. Raich*, 545 U.S. 1, 37 (2005) (Scalia, J., concurring), the Supreme Court held that Congress may regulate non-economic activity that has a substantial relation to interstate commerce, or when a “regulation is a necessary part of a more general regulation on interstate commerce.” In *United States v. Lopez*, 514 U.S. 549, 558-559 (1995) and *United States v. Morrison*, 529 U.S. 598, 608-609 (2000), the Supreme Court struck down federal statutes where Congress lacked authority under the Commerce Clause. If confirmed, I would follow the precedent of the Supreme Court and Ninth Circuit in deciding issues on the extent of congressional authority under the Commerce Clause.

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

Response: The authority of the President to act must stem from either an act of Congress or from the Constitution itself. *Medellin v. Texas*, 552 U.S. 491, 524 (2008) (internal citations omitted). The applicable analysis for a court to determine whether executive action exceeds presidential authority is set out in Justice Jackson’s concurrence in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952). If confirmed, I would follow Supreme Court and Ninth Circuit precedent in deciding any challenges to executive action.

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

Response: In *Washington v. Gluckberg*, 521 U.S. 702, 720-721 (1997) (internal citations omitted), the Supreme Court held that fundamental rights include “the specific freedoms protected by the Bill of Rights,” and “those fundamental rights and liberties which are, objectively, deeply rooted in this Nation’s history and tradition” and which are “implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed.” If confirmed, I would follow Supreme Court and Ninth Circuit precedent in deciding issues concerning fundamental rights.

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

Response: The Supreme Court has identified the classifications which are subject to heightened scrutiny under the Equal Protection Clause. They include race, alienage, and national origin, which are subject to strict scrutiny; and gender and illegitimacy, which are subject to intermediate scrutiny. *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440-441 (1985). If confirmed, I would faithfully follow Supreme Court and Ninth Circuit precedent in determining what classifications are subject to heightened scrutiny and how to apply such scrutiny to the facts of a particular case.

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 sufficient information or expertise to have any personal expectation on this issue, and in any event, my personal expectation would play no role in any judicial

decisions. If confirmed, I would follow the holding of *Grutter, Fisher v. University of Texas at Austin*, 133 S. Ct. 2411 (2013), and any other subsequent precedent on the use of race in admissions to public institutions of higher education.