

Response of John J. Tuchi
Nominee to be United States District Judge for the District of Arizona
to the Written Questions for the Record
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 is one of restraint, to decide only those questions necessary for resolution of the matter and to do so through adherence to applicable precedent, remaining faithful to the text of the law to be applied. I would treat all participants in the process with respect, strive to be patient and always to listen, being mindful that no one has a monopoly on the right answers. I do not know enough about the judicial philosophies of the many justices who served on the Warren, Burger and Rehnquist Courts to identify which mine most closely follows.

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 held that the original public meaning of the Constitution at the founding should be used to interpret the Constitution. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570, 601 (2008). If confirmed I would follow *Heller* and other applicable precedents.

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: Under no circumstances would I overrule that precedent. The role of a United States District Judge is to follow all applicable precedent as handed down by the Supreme Court and the circuit court of which their district is a constituent.

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: In *Garcia*, the Supreme Court upheld Congress's extension of the Fair Labor Standards Act's protections to state employees under its Commerce Clause powers, rather than impose a "judicially created limitation" on its power. *See Garcia*, 469 U.S. at 551-56. If confirmed to the district court, I would be bound to follow the precedent of *Garcia* wherever it applied to the issues before me, and I would do so.

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 held that Congress may regulate under the Commerce Clause in three ways: it may 1) “regulate the use of the channels of interstate commerce”; 2) “regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce”; and 3) “regulate those activities having a substantial relation to interstate commerce.” *United States v. Lopez*, 514 U.S. 549, 558 (1995); *see also United States v. Morrison*, 529 U.S. 598 (2000). If confirmed to the district court, I would apply *Morrison*, *Lopez* and any other controlling precedent to questions involving Congress’s power to regulate non-economic activity through the Commerce Clause.

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

Response: In *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), the Supreme Court held that the courts have the authority in a justiciable case or controversy to invalidate presidential actions that 1) violate the Constitution or a statute properly enacted by Congress; or 2) exceed the authority granted to the President by the Constitution or by statute.

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

Response: In *Washington v. Glucksberg*, 521 U.S. 702 (1997), the Supreme Court found fundamental rights to be those “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.” *Id.* at 720-21 (internal citations omitted). If confirmed to the district court, I would apply *Glucksberg* and all other controlling precedent in analyzing substantive due process issues.

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

Response: Courts will apply heightened scrutiny under an Equal Protection Clause analysis to any classification created by law that abridges a suspect class or a fundamental right. The Supreme Court has found that race, alienage and gender, among others, are classifications meriting some level of heightened scrutiny. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432 (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 an expectation either way. If confirmed and if facing a question involving race-conscious mechanisms in public higher education, I would identify and apply all controlling precedent.