

**Response of Derrick Kahala Watson
Nominee to be United States District Judge for the District of Hawaii
to the Written Questions of Senator Ted Cruz**

Judicial Philosophy

Describe how you would characterize your judicial philosophy, and identify which US Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: My philosophical approach would emphasize judicial restraint and adherence to precedent. I am not, however, a scholar of the Supreme Court and am not familiar enough with the philosophies of each of the individual justices of these Courts to identify a particular justice whose philosophy is 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: Yes, originalism and, more specifically, original meaning should be considered through historical scholarship and inquiry obtained from the parties, the court and/or amici.

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: The role of a federal district court judge is to apply controlling precedent where it exists, not to seek to overrule that precedent even if the judge disagrees with it. This is the role and approach I intend to follow.

Congressional Power

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: It would be inappropriate for a prospective nominee to express agreement or disagreement with binding precedent of the Supreme Court. If confirmed, I would be bound to follow Supreme Court precedent without regard to whatever personal views I might have regarding that precedent.

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 categories of activity that Congress may regulate under its Commerce Clause authority: 1) “the use of the channels of interstate commerce;” 2) “the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may only come from intrastate activities;” and 3) “activities having a substantial relation to interstate commerce.” *United States v. Lopez*, 514 U.S. 549, 558-559 (1995). Under this formulation, it is possible that Congress’ Commerce Clause power, together with its Necessary and Proper Clause power, extends to non-economic activity.

Presidential Power

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

Response: The judicial framework for evaluating the validity of an executive order is set forth in *Youngstown Sheet & Tube v. Sawyer*, 343 U.S. 579, 635-638 (1952) (Jackson, J. concurring). The focus of such a review includes whether the order was issued pursuant to an express or implied Congressional authorization, whether the order is closely related to that authorization, and whether the subject matter of the order concerns an area traditionally entrusted to the President (*e.g.* foreign affairs, national security).

Individual Rights

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

Response: Fundamental rights subject to substantive due process review include those fundamental rights and liberties that are deeply rooted in the Nation’s history and traditions, such as the right to marry, to have children, to bodily integrity and to privacy. *See Washington v. Glucksberg*, 521 U.S. 702, 720-721 (1997).

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

Response: Suspect classifications entitled to heightened scrutiny under the Equal Protection Clause include those based on race, national origin, gender, alienage and legitimacy.

Do you "expect that [25] 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 federal district judge, I would be bound to apply all controlling precedent regarding the use of affirmative action in public higher education, regardless of any personal expectations that I might have.