

**Response of Susan P. Watters
Nominee to be U.S. District Judge for the District of Montana
To the Written Questions of Senator Ted Cruz**

Judicial Philosophy

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 to treat all who appear before me with courtesy and respect and to faithfully follow precedent in order to provide fairness and consistency within the judicial system. I have not studied the judicial philosophies of the justices who served on the Warren, Burger, or Rehnquist courts, so I am not able to say whose philosophy is most 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: If confirmed, I would follow applicable precedent established by the Supreme Court and the Ninth Circuit to interpret the Constitution. For example, the Supreme Court has applied original meaning originalism in *District of Columbia v. Heller*, 554 U.S. 570 (2008).

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, there would be no circumstance in which I would overrule precedent.

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: The *Garcia* decision represents binding precedent. If confirmed as a district judge, I would be compelled to follow *Garcia*, as well as any subsequent precedent on this issue as established by the Supreme Court and the Ninth Circuit.

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

Response: According to *United State v Lopez*, 514 U.S. 549, 558-559 (1995), Congress, under the Commerce Clause, "may regulate the use of the channels of interstate commerce", and may "regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities." Congress also may "regulate those

activities having a substantial relation to interstate commerce, i.e., those activities that substantially affect interstate commerce.” *Id.* (citations omitted). If confirmed, I will apply the analysis set forth in *Lopez* and other applicable precedent established by the Supreme Court and the Ninth Circuit to determine whether an activity is within the scope of the Commerce Clause.

Presidential Power

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

Response: The judicially enforceable limits on the President’s ability to issue executive orders or executive actions are set forth in Justice Jackson’s concurring opinion in the Supreme Court decision, *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952). If confirmed, I would apply the *Youngstown* analysis to any cases involving the legality of presidential executive orders or actions.

Individual Rights

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 specially 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 (1997) (citations omitted). If confirmed, I would apply the precedent that has been set previously by the Supreme Court and the Ninth Circuit.

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

Response: Strict scrutiny under the Equal Protection Clause applies when a government action applies to suspect classifications, such as race and national origin, and an intermediate level of scrutiny applies to quasi-suspect classifications such as gender and illegitimacy. *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 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: *Grutter* is binding precedent in this area of the law. As such, if confirmed, I would be bound to follow the *Grutter* case and any subsequent binding precedent, such as *Fisher v. University of Texas*, 133 S. Ct. 2411 (2013), in the area of affirmative action in higher education, regardless of any personal expectations or opinions.