

Responses of Andrea R. Wood
Nominee to be United States District Judge for the Northern District of Illinois
to the Written Questions of Senator Ted Cruz

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: I believe that a judge should demonstrate a deep and abiding respect for the rule of law, the institution of the judiciary and its role in our constitutional system. I further believe that the integrity of our judicial system depends upon judges treating all participants in the judicial process with respect and fairness, and faithfully applying the law to the facts of particular cases regardless of their own personal views or opinions. Although I hold all Supreme Court Justices in the highest regard, I do not consider myself to be a scholar of their judicial philosophies such that I can identify one whose judicial philosophy is 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: If confirmed as a district court judge, I would faithfully apply Supreme Court and Seventh Circuit precedent regarding constitutional interpretation. In a number of cases, the Supreme Court has used originalism to interpret certain Constitutional provisions. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008). I would faithfully apply all such 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: If confirmed as a district court judge, I would have no authority to overrule Supreme Court or Seventh Circuit decisions. I would faithfully apply controlling precedent in all circumstances. Correspondingly, if a decision that is precedent today were to be overturned by the Supreme Court or the Seventh Circuit in the future, I would follow the precedent that exists at the time of my ruling.

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: As a judicial nominee, I do not feel it is appropriate to express a personal view regarding the quoted statement from *Garcia v. San Antonio Metro Transit Authority*, 469 U.S. 528 (1985). *Garcia* is binding Supreme Court precedent. If confirmed, I would follow it regardless of any personal views.

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 areas that the federal government may regulate under its Commerce Clause power: (1) the use of the channels of interstate commerce, (2) the instrumentalities of interstate commerce, or persons or things in interstate commerce even if threatened only by intrastate activities, and (3) those activities having a substantial relation to interstate commerce, *i.e.*, those activities that substantially affect interstate commerce. *United States v. Lopez*, 514 U.S. 549, 558-59 (1995). In *Lopez* and *United States v. Morrison*, 529 U.S. 598 (2000), the Court focused on the non-economic nature of the conduct that Congress sought to regulate pursuant to its Commerce Clause power in finding the statutes at issue to be unconstitutional. If confirmed as a district court judge, I would faithfully follow Supreme Court and Seventh Circuit precedent in this area, including *Lopez*, *Morrison* and *Gonzales v. Raich*, 545 U.S. 1 (2005).

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

Response: The President's ability to issue executive orders or executive actions is limited to those powers authorized by the Constitution and acts of Congress. See *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952). If confirmed as a district court judge, I would faithfully apply Supreme Court and Seventh Circuit precedent in determining whether the President had exceeded the limits of his authority.

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

Response: The Supreme Court has described "fundamental" rights protected by the Due Process Clause as including "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, 721 (1997) (internal citations and quotations omitted). If confirmed as a district court judge, I would faithfully apply Supreme Court and Seventh Circuit precedent to determine 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: According to Supreme Court precedent, a classification should be subjected to heightened scrutiny when it differentiates based on certain characteristics such as race, alienage, national origin or gender. See *City of Cleburne, Tex. v. Cleburne Living Center*, 473 U.S. 432, 440 (1985). Heightened scrutiny also applies when a state law impinges on personal rights protected by the Constitution, see *id.*, or when legislation affects "fundamental" rights, see *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997). If confirmed as a district court judge, I would faithfully apply Supreme Court and Seventh Circuit precedent regarding this issue.

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: As a judicial nominee, I do not feel it is appropriate to express a personal view regarding the quoted passage from *Grutter v. Bollinger*, 539 U.S. 306 (2003). If confirmed as a district court judge, I would faithfully apply controlling precedent regarding the use of racial preferences in public higher education – including the Supreme Court’s decisions in *Grutter*, *Regents of University of California v. Bakke*, 438 U.S. 265 (1978), *Gratz v. Bollinger*, 539 U.S. 244 (2003), and *Fisher v. University of Texas at Austin*, __ S.Ct. __, 2013 WL 3155220 (June 24, 2013) – regardless of any personal views or expectations.