

**Senator Grassley
Questions for the Record**

**James Soto,
Nominee: U.S. District Judge for the District of Arizona**

1. What is the most important attribute of a judge, and do you possess it?

Response: A good judge must possess many important attributes. I believe that the most important attribute of a good judge is the ability to be fair and impartial and to decide a case based upon the applicable facts and law, setting aside any personal or outside considerations. I believe that my record as a trial court judge for over twelve years demonstrates that I possess that attribute.

2. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

Response: A good judge must be respectful, patient, and even-tempered. He must demonstrate to the parties that he has given their respective positions thoughtful consideration before he makes his decision. I believe that I have met that standard and that my record as a trial judge demonstrates that.

3. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

Response: I would be fully committed to following the legal precedents of the Supreme Court and the Ninth Circuit regardless of my personal opinions or whether or not I agree or disagree with such legal precedents.

4. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

Response: I would first consider the plain language of the statute or other provision in question. If the language was unambiguous, then I would apply the language as written. If the language was ambiguous at least as applied to the facts of the particular case before me, then I would apply the principles of statutory construction and look to precedents from the Supreme Court, the Ninth Circuit, and other circuit courts in analogous cases or issues in addressing the issues before me.

- 5. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: If confirmed, I would always follow the precedents of the Supreme Court and Court of Appeals, notwithstanding any personal opinion I may have.

- 6. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: A court should not address the constitutionality of a statute if the case can be decided on other grounds. A court should begin its legal analysis with the presumption that the statute is constitutional. A court should address the constitutionality of a federal statute only when it is absolutely necessary to decide the case before the court and applicable legal precedent clearly shows that addressing the constitutionality of a statute is required. A court should strike down a statute only when the court determines that a statute violates the Constitution or that Congress has exceeded its authority.

- 7. In your view, is it ever proper for judges to rely on foreign law, or the views of the “world community”, in determining the meaning of the Constitution? Please explain.**

Response: No.

- 8. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?**

Response: A judge must put aside his personal beliefs and opinions and decide cases based upon legal precedent as it applies to the facts of any particular case. I believe that my record as a trial judge for over twelve years demonstrates that I strictly follow the applicable precedent and do not allow personal ideology or opinions to affect my rulings.

- 9. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?**

Response: The legal system in our country depends in great part upon a fair and impartial judiciary that can set aside their personal views in deciding cases and apply legal precedent. If confirmed, I pledge to continue to set aside any personal views and to treat all parties who may appear before me with fairness, respect, and patience, as I have done as a trial judge for over twelve years. I consider the oath of office to be a solemn oath, which I pledge to follow without reservation.

- 10. If confirmed, how do you intend to manage your caseload?**

Response: As a state court judge for over twelve years, I currently manage hundreds of active cases involving a wide variety of legal issues, including significant criminal and civil caseloads. I believe that early and active management of cases by the trial judge is essential to identifying and narrowing the issues in a case, avoiding unnecessary litigation and delays, and resolving cases in a fair and expeditious manner.

11. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

Response: Absolutely. The parties should always have the opportunity to discuss with the trial court the appropriate pace and manner in which litigation should proceed. However, it is ultimately the court's obligation to ensure that a case proceeds in a fair and speedy manner, giving consideration to the cost to the litigants occasioned by unnecessary delays. Trial judges have a number of tools available to them to control the pace of litigation, including issuing appropriate scheduling orders and setting regular status conferences.

12. As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.

Response: I must first determine the facts of a particular case, considering the testimony and evidence presented at trial and applying any relevant rules of evidence and rules of procedure. I then apply the relevant law to the facts of the case considering applicable constitutional and statutory provisions in arriving at a decision.

13. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".

- a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.**

Response: No.

- b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.**

Response: No.

14. Please describe with particularity the process by which these questions were answered.

Response: I received and read these questions on February 4, 2014. On February 5, 2014 I prepared my answers to the questions and forwarded them to an attorney in the Office of Legal Policy of the Department of Justice for review. When they were final, I authorized transmittal of the answers to the Committee.

15. Do these answers reflect your true and personal views?

Response: Yes.

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.