

Questions for the Record
Senator Ted Cruz

Responses of Leslie Joyce Abrams
Nominee, U.S. District Judge for the Middle District of Georgia

- 1. 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 be fair and impartial and respect the rule of law. The role of a judge is to apply the applicable law to the facts of each individual case. I have not studied the judicial philosophies of the individual Justices of the Supreme Court to an extent that would allow me to analogize my philosophy to a specific Justice's philosophy.

- 2. 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 applied originalism in cases including *District of Columbia v. Heller*, 554 U.S. 570 (2008), in which the Court looked to the original public meaning of the Second Amendment. If confirmed, I would follow Supreme Court and Eleventh Circuit precedent in interpreting the Constitution.

- 3. 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: As a district court judge I would not have authority to overrule legal precedent, and there is no circumstance where I would do so.

- 4. 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 Supreme Court’s holding in *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985) is binding on a district court judge. If confirmed, I would apply this precedent.

- 5. 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 which Congress may regulate under the Commerce Clause. See *United States v. Lopez*, 514 U.S. 549, 558-59 (1995); *United States v. Morrison*, 529 U.S. 598, 609 (2000). These categories are: (1) the use of the channels of interstate commerce; (2) the instrumentalities of interstate commerce; and (3) activities having a substantial relation to interstate commerce. *Id.* In his concurring opinion in *Gonzales v. Raich*, 545 U.S. 1, 37 (2005), Justice Scalia stated, "Congress may regulate even noneconomic local activity if that regulation is a necessary part of a more general regulation of interstate commerce." If confirmed, I would apply the law as identified in *Lopez*, *Raich*, *Morrison* and all other relevant Supreme Court and Eleventh Circuit precedent to determine whether the regulation of a particular activity is covered under the Commerce Clause.

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

Response: Justice Jackson's concurrence in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), set forth the analysis to use when determining whether the President has exceeded executive authority. If confirmed, I would apply this analysis to assessing the limits of any presidential executive orders or actions.

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

Response: The Supreme Court defined rights and liberties as "fundamental" for purposes of Due Process Clause protection when the right or liberty is "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, 720-21 (1997) (internal quotations and citations omitted). If confirmed, I would apply Supreme Court and Eleventh Circuit precedent when ruling on a case where fundamental rights were implicated.

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

Response: The Supreme Court has held that a classification is subject to heightened scrutiny under the Equal Protection Clause when the classification involves a suspect class, such as race, alienage, national origin, or gender. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440-41 (1985). If confirmed, I would apply Supreme Court and Eleventh Circuit precedent when determining the appropriate level of scrutiny under the Equal Protection Clause.

9. 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: If confirmed, I will follow the controlling precedent of the Supreme Court, including *Grutter* and *Fisher v. University of Texas at Austin, et al.*, 570 U.S. ____ (2013), on the appropriate use of racial preferences in public higher education.