

Questions for the Record
Senator Ted Cruz

Responses of Madeline Cox Arleo
Nominee, United States District Judge for the District of New Jersey

- 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: Having served as Magistrate Judge for fourteen years, I have tried to develop a judicial philosophy that emphasizes fairness and impartiality, respect for the rule of law, adherence to precedent, and respect for all who appear in court. I do not possess sufficient knowledge of the judicial philosophies of justices on the Warren, Burger or Rehnquist courts to comment as to whether their philosophies are analogous to mine.

- 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: If confirmed as a District Court Judge, I would look to the original public meaning consistent with the Supreme Court’s holding in such cases as *District of Columbia v. Heller*, 554 U.S. 570 (2008), 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: I would not overrule binding precedent.

- 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: If confirmed, I would follow all binding precedent, including *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528 (1985). Any personal views would not come into play in the judicial decision making process.

- 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 addressed the scope of Congress’ power under the Commerce Clause in *United States v. Morrison*, 529 U.S. 598 (2000), and *United States v. Lopez*, 514 U.S. 549 (1995), among other cases. In these cases, the Supreme Court struck down the statute at issue because of the absence of a nexus to economic activity. If confirmed, I would adhere to this precedent and any personal views would play no role in my decision making process.

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

Response: The Supreme Court held in *Youngstown Sheet & Tube v. Sawyer*, 343 U.S. 579 (1952) that the President's power to issue executive orders and take executive action must come from the United States Constitution or from Congress. If confirmed, I will follow that precedent.

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

Response: The Supreme Court has determined that a right is “fundamental” for the purposes of substantive due process when it is “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, 720-21 (1997) (internal citations and quotations omitted). If confirmed, I will follow that precedent.

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

Response: In *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1995), the Supreme Court held that legislative classifications based on race, alienage, national origin and gender or laws that impinge on personal rights protected by the Constitution are subject to heightened scrutiny. If confirmed, I will follow that precedent.

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: I do not have any expectations as to whether in the future, the use of racial preferences will no longer be necessary in public higher education. If confirmed, I will follow *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003) and all other Supreme Court precedent.