

Questions for the Record
Senator Ted Cruz

Responses of Joan Marie Azrack
Nominee, United States District Judge for the Eastern District of New York

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: During my 23-year tenure as a magistrate judge, I have approached each case with an open mind, treated all litigants fairly and impartially, and promptly decided disputes by applying controlling law to the specific facts before me. I do not have sufficient knowledge of the judicial philosophies of the justices on the Warren, Burger and Rehnquist Courts to compare their philosophies to my own.

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 and presented with a question of constitutional interpretation, I will follow controlling precedent and look to the original public meaning of the Constitution in accordance with such cases as *District of Columbia v. Heller*, 554 U.S. 570 (2008).

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: If confirmed, I will not overrule controlling 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 will follow all controlling precedent, including *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528 (1985).

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

Response: In *United States v. Lopez*, 514 U.S. 549 (1995), the Supreme Court identified three categories of activities that Congress may regulate under the Commerce Clause, including activities that substantially affect interstate commerce. Under this framework, the Supreme Court has struck down statutes that regulated certain types of non-economic activity. *United States v. Morrison*, 529 U.S. 598 (2000); *Lopez*, 514 U.S. 549. If confirmed, I will follow this, and other controlling precedent.

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

Response: In *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), the Supreme Court held that the President's ability to issue executive orders or take executive actions must be rooted in the Constitution or an act of 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: According to the Supreme Court, a right is "fundamental" for purposes of the substantive due process doctrine 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 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: The Supreme Court has held that certain classifications, such as those based on race, alienage, national origin, gender, and illegitimacy are subject to heightened scrutiny. See *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1995). 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 about the future necessity of racial preferences in public higher education. If confirmed, I will follow controlling precedent on this issue, including *Grutter v. Bollinger*, 539 U.S. 306 (2003), and *Fisher v. University of Texas at Austin*, 133 S. Ct. 2411 (2013).