

Questions for the Record
Senator Ted Cruz

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Nominee, U.S. District Court for the Eastern District of Washington

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: Judges should be committed to the rule of law, which means that all cases should be decided impartially by applying binding precedent to the relevant facts. Judges should be fair, patient, and open-minded and should treat all parties with respect and civility. If confirmed, I intend to follow this judicial approach. I have not studied the judicial philosophy of the Supreme Court Justices and therefore cannot identify a Justice whose judicial philosophy is most analogous to mine.

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 Judge, I will follow Supreme Court precedent regarding the use of originalism to interpret the Constitution. For example, in the case of *District of Columbia v. Heller*, 554 U.S. 570, 605 (2008) the Supreme Court held that the public understanding of a legal text in the time after enactment plays a critical role in constitutional interpretation. I will follow this and all other Supreme Court precedent.

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 never overrule binding precedent if confirmed as a District Judge.

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 case of *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528 (1985) is binding precedent. If confirmed as a District Judge, I would be bound to follow *Garcia* and all other precedent from the Supreme Court and the Ninth Circuit, regardless of any disagreement I may or may not have.

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 recognized limits on the power of Congress to regulate non-economic activity pursuant to the Commerce Clause. *See, e.g., United States v. Morrison*, 529 U.S. 598 (2000); *United States v. Lopez*, 514 U.S. 549 (1995). However, in *Gonzales v. Raich*, 545 U.S. 1 (2005), Justice Scalia noted that "Congress may regulate even noneconomic local activity if that regulation is a necessary part of a more general regulation of interstate commerce." *Id.* at 37 (Scalia, J., concurring). If confirmed as a District Judge, I intend to follow all binding Supreme Court and Ninth Circuit precedent regarding the issue of Congressional regulatory powers.

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

Response: Federal courts should avoid reaching constitutional questions when possible. However, the Supreme Court has held that the President's authority to issue executive orders or take executive actions must be derived from either an act of Congress or the Constitution. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952). If confirmed, I will follow Supreme Court precedent on this issue.

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

Response: The Supreme Court has held that a right is fundamental for purposes of the substantive due process doctrine only if it is deeply rooted in our nation's history and tradition and "implicit in the concept of ordered liberty." *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997). *See also, Chavez v. Martinez*, 538 U.S. 760, 775 (2003). If confirmed, I will follow this and all other precedent from the Supreme Court and the Ninth Circuit concerning the substantive due process doctrine.

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

Response: The Supreme Court has held that heightened scrutiny under the Equal Protection Clause is appropriate when a classification burdens a fundamental right or when it differentiates categories such as race, national origin, or gender. *City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 440 (1985); *Mass. Bd. of Retirement v. Murgia*, 427 U.S. 307, 312 (1976). If confirmed, I will closely follow binding precedent on 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: If confirmed as a District Judge, I would follow Supreme Court precedent on the use of racial preferences in university admissions without regard to my own personal expectations or opinions.