

John Robert Blakey
Nominee, United States District Court for the Northern District of Illinois
Responses to Questions for the Record
From Senator Ted Cruz

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: If I am fortunate enough to be confirmed, my judicial philosophy would be to fairly and impartially apply the law to the facts presented in each case in a timely and professional manner. While I am not sufficiently versed in each of the individual judicial philosophies of the various Supreme Court Justices from the Warren, Burger and Rehnquist Courts to properly identify the one most analogous to mine, I believe that the Supreme Court Justices, as a whole, would endorse the judicial approach noted above.

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, I would interpret the Constitution as set forth by binding precedent. In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court adopted an “original public meaning” interpretation of the Second Amendment of the Constitution. If confirmed, I would faithfully adhere to this ruling and all other precedent of the Supreme Court and the Court of Appeals for the Seventh Circuit.

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 as a member of the District Court for the Northern District of Illinois, I would be bound to follow the precedent of the Supreme Court and the Seventh Circuit, and thus I could not, and would not, overrule prior 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, I would follow and faithfully apply the Supreme Court’s ruling in *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528 (1985), and all other binding precedent placing constitutional limits on federal power, and do so without regard to whether or not I personally agreed or disagreed with such precedent.

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 activity that the Congress may regulate under the Commerce Clause and the Necessary and Proper Clause: (1) the channels of interstate commerce; (2) the instrumentalities of interstate commerce; and (3) the activities substantially affecting interstate commerce. See also *Gonzales v. Raich*, 545 U.S. 1 (2005); *United States v. Morrison*, 529 U.S. 598 (2000). If confirmed, I would follow these decisions and all other precedent from the Supreme Court and Seventh Circuit interpreting the constitutional scope of Congressional power.

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

Response: As the Supreme Court held in *Medellin v. Texas*, 552 U.S. 491, 524 (2008) (quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952)), the President's authority to issue executive orders or engage in other executive actions must stem from an act of Congress or from the Constitution itself. If confirmed, I would apply the requisite "tripartite" analysis set forth in this case, and all other binding precedent.

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

Response: Under Supreme Court precedent, a right is "fundamental" for the purposes of the substantive due process doctrine if, viewed objectively, it is "deeply rooted in this Nation's history and tradition" and is "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, 720-721 (1997) (internal citations and quotations omitted). If confirmed, I would follow this case, and all other controlling case law.

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

Response: As set forth by binding Supreme Court precedent, certain classifications are subjected to heightened levels of scrutiny under the Equal Protection Clause if they are based upon race, religion, national origin, gender, or if they burden a fundamental constitutional right. See *City of Cleburne v. Cleburne Living Center*, 472 U.S. 432 (1995). If I am confirmed, I would faithfully apply this case law, and all other precedent of the Supreme Court and the Seventh Circuit.

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 personal expectations regarding the future use of racial preferences in public higher education and, if confirmed, I would apply all Supreme Court and Seventh Circuit precedent in any case based upon the facts presented.