

Questions for the Record
Senator Ted Cruz

Stephen R. Bough
Nominee: U.S. District Judge for the Western District of Missouri

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: I do not have any particular judicial philosophy. In addition to believing that our justice system requires that judges always follow precedent, I believe that every case should be handled in a just and speedy manner with sensitivity to the cost that litigation can impose on both sides of a dispute. I also believe that judges should be neutral umpires in the litigation process. Having served as a law clerk for a United States District Judge, I was able to witness the qualities of a great trial judge. Those qualities include hard work, following the rules, being available to the attorneys to resolve disputes, listening calmly to arguments and acting fairly and impartially. I have not carefully studied the justices of the Warren, Burger and Rehnquist Courts to be comfortable saying that their views are analogous to my own views.

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 I have the opportunity to serve as a trial judge, it would be my duty to follow binding precedent. The United States Supreme Court has looked at the public understanding at the time of the enactment of the Constitution and I would follow that and any other binding precedent. *District of Columbia v. Heller*, 554 U.S. 570, 605 (2008).

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 I have the opportunity to serve as a trial judge, I would not overrule established precedent set by higher courts.

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 I have the opportunity to serve as a trial judge, it would be my duty to follow precedent, including *Garcia*. A judge's personal feelings about precedent should never interfere with following precedent.

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

Response: The United States Supreme Court has ruled on numerous cases involving the application of the Commerce Clause to non-economic activity. According to precedent, Congress may regulate (1) the channels of interstate commerce; (2) the instrumentalities of interstate commerce or people or things in interstate commerce; and (3) activity that has a substantial effect on interstate commerce. *See, e.g. United States v. Morrison*, 529 U.S. 598 (2000); *United States v. Lopez*, 514 U.S. 549 (1995). If I have the opportunity to serve as a trial judge, it would be my duty to follow the precedent of the United States Supreme Court.

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

Response: The power of the President to issue executive orders or take executive actions must come from either the acts of Congress or the United States Constitution. *See, e.g., Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952); *Medellin v. Texas*, 552 U.S. 491 (2008). If I have the opportunity to serve as a trial judge, it would be my duty to follow that and other precedent of the United States Supreme Court.

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

Response: According to the United States Supreme Court, a right is fundamental for substantive due process purposes when that right is "deeply rooted in this Nation's history and traditions." *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997) (internal citations in quotation omitted). If I have the opportunity to serve as a trial judge, it would be my duty to follow that and other precedent of the United States Supreme Court.

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

Response: According to the United States Supreme Court, strict scrutiny is only appropriate in limited circumstances such as when a law infringes on a fundamental right or involves a suspect classification such as race. *Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989). Intermediate scrutiny is appropriate in limited types of cases, including classifications based on gender. *United States v. Virginia*, 518 U.S. 515 (1996). The United States Supreme Court has also discussed when a classification should be subjected to heightened scrutiny in *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432 (1985). If I have the opportunity to serve as a trial judge, it would be my duty to follow that and other precedent of the United States Supreme Court.

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 have not formed any expectation on the use of racial preferences in public higher education fifteen years from now. If I have the opportunity to serve as a trial judge, it would be my duty to follow the precedent of the United States Supreme Court, including *Grutter v.*

Bollinger, 539 U.S. 306 (2003), and *Fisher v. University of Texas at Austin*, 133 S. Ct. 2411 (2013).