

Questions for the Record
Senator Ted Cruz

Timothy L. Brooks
Nominee, U.S. District Judge for the Western District of Arkansas

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: As a private practitioner for the last 24 years – representing plaintiffs and defendants in a wide variety of legal matters – I have not developed a judicial philosophy. Nor have I read Supreme Court decisions with the aim of reconciling the philosophies of particular jurists, although I do have great respect for the Justices on each of these Courts. I can explain the judicial principles I would uphold if confirmed as a district court judge. I would steadfastly apply the rule of law to the facts and issues at hand. I would be open-minded, fair, and impartial. I would faithfully respect precedent, and limit rulings to the issues necessary for disposition. I understand and would demonstrate great respect for the role of Congress in the enactment of laws on behalf of the American people.

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: I have not studied the different methodologies used to interpret the text of the Constitution. I do know that the Supreme Court discussed and applied originalism in finding an individual private right to possess weapons under the Second Amendment. *District of Columbia v. Heller*, 554 U.S. 570 (2008). If confirmed as a district court judge, I would faithfully adhere to precedent and the appropriate methodologies for constitutional interpretation as determined by the Supreme Court and the Eighth Circuit Court of Appeals.

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 judge, I would not overrule controlling 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: The stated quote is a holding of the Supreme Court, and as such would be binding precedent if I were to be confirmed as a judge.

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 stated: "Where economic activity substantially affects interstate commerce, legislation regulating that activity will be sustained." *United States v. Morrison*, 529 U.S. 598, 610 (2000) (quoting *United States v. Lopez*, 514 U.S. 549, 560 (1995)). In those cases, the Court invalidated congressional action by emphasizing non-economic relationships. In a more recent concurring opinion, Justice Scalia observed that "Congress may regulate even non-economic local activity if that regulation is a necessary part of a more general regulation of interstate commerce." *Gonzales v. Raich*, 545 U.S. 1, 37 (2005) (Scalia, J., concurring). If confirmed and confronted with this question as a district court judge, I would apply Commerce Clause precedent of the Supreme Court and the Eighth Circuit Court of Appeals to the particular facts and circumstances at hand, and limit my ruling to the issues necessary for decision.

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

Response: I generally understand that the President's power to issue executive orders "...must stem either from an act of Congress or from the Constitution itself." *Youngstown Sheet and Tube v. Sawyer*, 343 U.S. 579, 585 (1952). This constraint is judicially enforceable within the context of a justiciable case or controversy.

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 substantive due process analysis when it is "objectively deeply rooted in the Nation's history and tradition, ... and implicit in the concept of ordered liberty." *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997) (internal quotation marks and citations omitted). If confirmed, I would apply this and all other applicable Supreme Court precedent if confronted with this question.

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

Response: The Supreme Court has applied heightened scrutiny under the Equal Protection Clause to a narrow set of individual classifications, such as gender, race, religion, and ethnicity. The Court has also applied heightened scrutiny to non-suspect classifications when legislation impinges on a fundamental right. *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440 (1985).

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: In *Grutter*, the Supreme Court determined that the Equal Protection Clause did not prohibit the University of Michigan's narrowly tailored use of a "race-conscious" admissions policy – as contrasted to a pure race quota system. It was ten years ago that Justice O'Connor opined that in 25 years the use of racial preferences would no longer be necessary. *Grutter*, 539 U.S. at 343 (2003). More recently, the Supreme Court considered the University of Texas' admissions policy – which had been modeled after the Court's holding in *Grutter* – and emphasized that the strict scrutiny standard of review must be applied when a court reviews admissions policies using racial categories or classifications. *Fisher v. University of Texas*, 133 S.Ct. 2411, 2421 (2013) (remanded for further proceedings). Thus, if confirmed and confronted with this question, I would apply controlling precedent to the particular facts and circumstances at hand, and limit my ruling to the issues necessary for decision.