

Allison Dale Burroughs

**Questions for the Record
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: I believe that decisions in a courtroom should be made based on a fair and neutral application of the law to the facts. I also believe that it is important that decisions be made in a timely manner and that litigants feel that their views have been heard and respected regardless of the outcome. To ensure this, judges must be open minded, willing to work in order to have a thorough understanding of the issues and committed to a process that is fair, faithful to the law and that reflects intellectual and ethical integrity. I am not sufficiently familiar with the philosophies of individual justices such that I am comfortable saying whose philosophy is most analogous with 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: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court recognized that the public understanding of the Constitution at the time it was ratified was a relevant consideration when interpreting the Constitution. If confirmed, I will follow Supreme Court and First Circuit precedent on the issue.

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 district court judge, there is no circumstance under which I would overrule 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 be obligated to follow *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528 (1985) and other binding precedent regardless of whether I agreed or disagreed with it.

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 that Congress can regulate “the use of channels of interstate commerce,” the “instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities” and “activities that substantially affect interstate commerce.” See *United States v. Morrison*, 529 U.S. 598, 608-610 (2000); *United States v. Lopez*, 514 U.S. 549 (1995). If confirmed, I would follow this and all other relevant Supreme Court and First Circuit precedent.

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

Response: The President’s authority to issue executive orders or take executive action must come from an act of Congress or the Constitution itself. See *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952). If confirmed, I would follow the controlling precedent on this issue.

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

Response: A right is fundamental when “‘deeply rooted in this nation’s history and traditions’, and ‘implicit in the concept of ordered liberty.’” See *Washington v. Glucksberg*, 521 U.S. 702, 720-721 (1997) (internal citations omitted). If confirmed, I would follow the controlling precedent on this issue.

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

Response: A classification is subject to heightened scrutiny under the Equal Protection Clause when it burdens a fundamental right or works to the disadvantage of a suspect class. See, e.g., *City of Cleburne, Texas v. Cleburne Living Center*, 473 U.S. 432, 439-441 (1985). Classifications that are given strict scrutiny include those based on race, national origin and alienage. Gender and illegitimacy are given intermediate scrutiny. *Id.* If confirmed, I would follow controlling precedent regarding the application and interpretation of the Equal Protection Clause.

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, my personal expectations regarding racial preferences in public higher education will play no role in my judicial decisions, and I will follow binding 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).