

Questions for the Record
Senator Ted Cruz

Julie Elizabeth Carnes
Nominee, United States Circuit Judge for the Eleventh Circuit

1. **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 a judge should act fairly and be committed to following the law applicable to the facts in each particular case. Further, a judge should approach her work with humility, with a keen awareness of the distinct and limited role that an Article III judge plays in our system of government, and with a commitment not to overstep those bounds. I have not thoroughly studied the complete writings of any particular Justice and am therefore unable to say which Justice’s philosophy might be most analogous to my own.

2. **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: When precedent does not supply an answer to a question of constitutional interpretation, a court should consider original sources in construing the text of the particular provision at issue. The Supreme Court has most recently looked to original public meaning when considering the meaning of a constitutional provision. *See, e.g., Dist. of Columbia v. Heller*, 554 U.S. 570 (2008).

3. **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: A federal appellate judge has no authority to overrule any Supreme Court precedent, and I would not attempt to do so were I to be confirmed as an appellate judge. As to Eleventh Circuit precedent, the prior precedent rule provides that only the Supreme Court or the Eleventh Circuit sitting *en banc* can overrule existing circuit precedent. *See United States v. Vega-Castillo*, 540 F.3d 1235, 1236-37 (11th Cir. 2008). A circuit court should only sit *en banc* when “the proceeding involves a question of exceptional importance” or it “is necessary to secure or maintain uniformity of the court’s decisions.” FED. R. APP. P. 35(a) (2013).

4. **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: Based on the particular facts before it in the *Garcia* case, the Supreme Court held that state sovereign interests were adequately protected through “procedural safeguards inherent in the structure of the federal system.” *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985). In other cases, however, the Court has relied, among other things, on the Tenth Amendment to articulate judicially-recognized limitations on federal power *vis-a-vis* state sovereign interests. See, e.g., *New York v. United States*, 505 U.S. 144 (1992); *Printz v. United States*, 521 U.S. 898 (1997).

5. 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 three broad categories of activity that Congress may regulate under the Commerce Clause: (1) the channels of interstate commerce, (2) the instrumentalities of interstate commerce, and (3) those activities that substantially affect interstate commerce. *Perez v. United States*, 402 U.S. 146, 150 (1971). In *United States v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000), the Supreme Court invalidated federal statutes as exceeding Congress’s Commerce Clause authority. In doing so, the Court emphasized the non-economic nature of the conduct regulated by the statutes at issue. See *Morrison*, 529 U.S. at 610-11, 613; *Lopez*, 514 U.S. at 560-61, 566-67. However, the Court has not held that Congress may never regulate non-economic activity. Further, in a concurring opinion, Justice Scalia has written that “Congress may regulate even non-economic 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).

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

Response: The President’s power to issue executive orders “must stem either from an act of Congress or from the Constitution itself.” *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952). In gauging the extent of the President’s power in a particular situation, the Supreme Court has relied on the “tripartite” method of analysis articulated in Justice Jackson’s concurring opinion in *Youngstown*, noting that the latter sets forth “the accepted framework for evaluating executive action in this area.” *Medellin v. Texas*, 552 U.S. 491, 524 (2008).

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

Response: The Supreme Court has explained that a right is considered fundamental for purposes of substantive due process analysis when, 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 [it were] sacrificed.’” *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997) (internal citations omitted).

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

Response: The Supreme Court applies strict scrutiny to classifications that are “seldom relevant to the achievement of any legitimate state interest,” and the Court has identified “race, alienage, [and] national origin” as fitting within that category. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985). Strict scrutiny also applies “when state laws impinge on personal rights protected by the Constitution.” *Id.* The Court applies intermediate scrutiny to classifications, such as gender, that “generally provide[] no sensible ground for differential treatment.” *Id.* at 440-41.

9. 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: Regardless of what my personal assessment of the need for racial preferences in public higher education may be in fifteen years, I will follow applicable precedent on that point. The current controlling authority in this area can be found in such cases as *Grutter*, cited above, and *Fisher v. Univ. of Texas*, 570 U.S. ___, 133 S. Ct. 2411 (2013). Absent a change in that precedent, I would be obligated to follow those cases and any other applicable Supreme Court or Eleventh Circuit authority.