

Senator Ted Cruz
Questions for the Record

Theodore David Chuang
Nominee, U.S. District Judge for the District of Maryland

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 to with yours?

Response: I believe that a federal judge is a guardian of the rule of law and the American system of justice. Accordingly, my judicial philosophy is that a judge must always decide cases based on the Constitution, the applicable laws, and the facts of the case, and not on any outside considerations. A judge’s role is to learn the facts of a case, study the applicable statutes and precedents, and apply the law to the case in a fair and impartial manner, treating all parties with respect and dignity. I have profound respect for the institution of the Supreme Court and for its justices, past and present, but I do not have a sufficient basis of knowledge to identify a single justice who has expressed a judicial philosophy that I would adopt as my own.

Do you believe that 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 to serve as a United States District Judge, my role in cases involving constitutional interpretation would be to study and apply to the case at hand the applicable precedent of the Supreme Court and the Fourth Circuit, including precedent considering the original intent of the drafters or the original public meaning of the text. See, e.g., *District of Columbia v. Heller*, 554 U.S. 570 (2008).

If a decision is precedent today while you’re going through the confirmation process, under what circumstances would you overrule that precedent as a judge?

Response: If confirmed to serve as a United States District Judge, I would be bound by the precedent of the Supreme Court and the Fourth Circuit. I would not overrule that 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 to serve as a United States District Judge, I would be bound by Supreme Court and Fourth Circuit precedent addressing limitations on federal action toward state governments, including cases such as *Garcia*, which addressed the specific issue of regulatory immunity for state governments under the Commerce Clause. I would apply such precedent without regard to any personal views.

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 identified three categories of activity that may be regulated under the Commerce Clause: (1) the use of the channels of interstate commerce; (2) the instrumentalities of interstate commerce and persons or things in interstate commerce; and (3) those activities that substantially affect interstate commerce. *Gonzales v. Raich*, 545 U.S. 1, 16-17 (2005); *United States v. Morrison*, 529 U.S. 598, 608-09 (2000); *United States v. Lopez*, 514 U.S. 549, 558-59 (1995). In *Morrison*, the Court declined to “adopt a categorical rule against aggregating the effects of any noneconomic activity” in order to uphold congressional action under the Commerce Clause, but noted that the Court historically has “upheld Commerce Clause regulation of intrastate activity only where that activity is economic in nature.” 529 U.S. at 613. If confirmed to serve as a United States District Judge, I would follow all applicable Supreme Court and Fourth Circuit precedent on the extent of congressional authority under the Commerce Clause.

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

Response: According to the Supreme Court, “[t]he President’s authority to act, as with the exercise of any governmental power, must stem either from an act of Congress or from the Constitution itself.” *Medellin v. Texas*, 552 U.S. 491, 524 (2008) (internal citations omitted). In *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), the Supreme Court invalidated an executive order requiring federal seizure of the nation’s steel mills based on the determination that it was not authorized by statute or the Constitution. The prevailing framework for a court to analyze whether executive action exceeds presidential authority is set forth in Justice Jackson’s concurrence in *Youngstown*. 343 U.S. at 635-38 (Jackson, J., concurring).

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

Response: The Supreme Court has stated that fundamental rights include “the specific freedoms protected by the Bill of Rights,” and “those fundamental rights and liberties which are, objectively, deeply rooted in this Nation’s history and tradition” and which are “implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed.” *Washington v. Gluckberg*, 521 U.S. 702, 720-21 (1997) (internal citations and quotations omitted). If confirmed, I would consider a right to be fundamental under the Due Process Clause if the Supreme Court or the Fourth Circuit has previously held it to be fundamental under this standard.

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

Response: The Supreme Court has identified the classifications which are subject to heightened scrutiny under the Equal Protection Clause. These classifications include race, alienage, and national origin, which are subject to strict scrutiny; and gender and illegitimacy, which are subject to intermediate scrutiny. *See, e.g., City of Cleburne, Texas v. Cleburne Living Center*, 473 U.S. 432, 440-41 (1985). If confirmed, I would follow Supreme Court and Fourth Circuit precedent on what classifications are subject to heightened scrutiny and how to apply such scrutiny.

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 sufficient background or expertise to have any personal expectations on this matter. If confirmed, I would apply *Grutter* and any other subsequent Supreme Court or Fourth Circuit precedent on the use of race in admissions to public institutions of higher education, such as *Fisher v. Univ. of Texas at Austin*, 133 S. Ct. 2411 (2013), in any applicable cases.