

Senator Ted Cruz
Questions for the Record

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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 a judge should be impartial, open-minded, prepared, and respectful to all who come before him or her. I do not consider myself to be a student of the philosophies of the Supreme Court justices, and therefore do not have a view as to 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: The Supreme Court has examined the original public meaning of constitutional provisions in deciding on the constitutionality of statutes, *see, e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008), and, if confirmed, I will follow this and all other binding precedent.

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: I would not under any circumstance 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 to be a District Judge, I would apply *Garcia* and all other binding precedents, regardless of whether I agreed or disagreed with them.

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 held that the Commerce Clause authorizes the regulation of three categories of activity: (1) “the use of the channels of interstate commerce,” (2) “the instrumentalities of interstate commerce, or persons or things in interstate commerce,” and activities that threaten such instrumentalities, persons or things, and (3) “activities that substantially affect interstate commerce.” *United States v. Lopez*, 514 U.S. 549, 558-559 (1995); *see also United States v. Morrison*, 529 U.S. 598, 613 (2000) and *Gonzales v. Raich*, 545 U.S. 1, 37 (2005) (Scalia, J. concurring) (“Congress may regulate even noneconomic local activity if

that regulation is a necessary part of a more general regulation of interstate commerce.”). Although the Court highlighted the non-economic nature of the activity being regulated in *Lopez* and *Morrison* before striking down the statute or portion of the statute that was at issue in those cases, it has not specifically excluded non-economic activity from congressional regulation. If confirmed, I would apply the analysis set forth in *Lopez*, *Morrison*, *Raich*, and other applicable precedents in determining whether an activity is covered by the Commerce Clause.

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

Response: The President’s ability to issue executive orders or take executive action is limited by the authority granted to him in the Constitution or by an act of Congress. In *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635-638 (1952), Justice Jackson, in his concurrence, defined the judicially enforceable limits on presidential acts, and the Supreme Court has adopted his analysis. If confirmed, I would apply that analysis to any cases in which I am required to assess the legality of presidential executive orders or actions.

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

Response: The Supreme Court has “regularly observed that the Due Process Clause specially protects those fundamental rights and liberties which are objectively, ‘deeply rooted in the Nation’s history and tradition’ and ‘implicit in the concept of ordered liberty’ such that ‘neither liberty nor justice would exist if they were sacrificed.’” *Washington v. Glucksberg*, 521 U.S. 702, 720-721 (1997) (internal quotation marks and citations omitted). If confirmed, I would follow that binding precedent.

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

Response: The Supreme Court has ruled that certain classifications, such as race, gender, national origin, or classifications that burden a fundamental right, are subject to a higher level of scrutiny under the Equal Protection Clause. See *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 440-442 (1985); *Zablocki v. Redhail*, 434 U.S. 374, 388 (1978). If confirmed, I would follow Supreme Court precedent with respect to the evaluation of classifications and levels of scrutiny for purposes of the Equal Protection Clause, as in all other cases.

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, I would apply binding Supreme Court precedent concerning the use of racial preferences in public higher education, including *Grutter* and the Court’s decision in *Fisher v. Univ. of Texas at Austin*, 133 S. Ct. 2411 (2013), regardless of any personal view or expectation I might have.