

Questions for the Record
Senator Ted Cruz

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Nominee, United States District Court for the Northern District of Georgia

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: My judicial philosophy would be to handle each case with an impartial and unbiased mind. A judge should be prepared, should treat all parties with respect and patience, and should give serious consideration to the legal arguments of all parties. A district judge must apply the facts to the law as written and follow binding precedent. I have not studied philosophies of the justices of the Warren, Burger, or Rehnquist courts, but I presume that all of them embraced the practices and philosophy that I have described.

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: If confirmed as a district judge, I would follow the precedent of the Supreme Court of the United States and the United States Court of Appeals for the Eleventh Circuit, including the analysis in cases such as *District of Columbia v. Heller*, 554 U.S. 570 (2008), in which the Court considered the original public meaning of the text of the Second Amendment to the Constitution.

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 judge, I would not overrule existing precedent under any circumstance. I would be bound by the precedent of the Supreme Court and the Eleventh Circuit.

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 as a district judge, I would be bound by the Supreme Court’s decision in *Garcia* and subsequent decisions which identify constitutional limitations on congressional power. I would apply the holdings in those cases without regard to whether I personally agree or disagree with these decisions.

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 (3)

“activities that substantially affect interstate commerce.” *United States v. Lopez*, 514 U.S. 549, 558-59 (1995). In *Lopez* and *United States v. Morrison*, 529 U.S. 598, 613 (2000), the Supreme Court articulated limitations to the reach of the Commerce Clause to certain non-economic activities. See also *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.”). If confirmed as a district judge, I would follow Supreme Court and Eleventh Circuit precedent in deciding issues concerning 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: 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. *Medellin v. Texas*, 552 U.S. 491, 524 (2008). The applicable analysis for a court to determine whether executive action exceeds presidential authority is set out in Justice Jackson’s concurrence in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 634-55 (1952). If confirmed as a district judge, I would follow Supreme Court and Eleventh Circuit precedent in deciding any challenges to executive action.

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

Response: In *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997), the Supreme Court held 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[.]” (internal citations omitted). If confirmed as a district judge, I would follow Supreme Court and Eleventh Circuit precedent in deciding issues concerning fundamental rights.

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

Response: The Supreme Court has identified the classifications that are subject to heightened scrutiny under the Equal Protection Clause. They include race, alienage, and national origin (which are subject to strict scrutiny) and gender and illegitimacy (which are subject to intermediate scrutiny). See *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440-41 (1985). If confirmed as a district judge, I would follow Supreme Court and Eleventh Circuit 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: I do not have sufficient information or expertise to have any personal expectation on this issue, and, even if I had one, it would play no role in any judicial decision. If confirmed as a district judge, I would follow the holding of *Grutter*, the Supreme Court’s recent decision in *Fisher v.*

University of Texas at Austin, 133 S. Ct. 2411 (2013), and any other Supreme Court or Eleventh Circuit precedent concerning the use of race-conscious policies in public higher education.