

**Questions for the Record
Senator Ted Cruz**

**Christopher Reid Cooper
Nominee, United States District Court for the District of Columbia**

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: If confirmed, I would not come to the bench with any pre-determined judicial philosophy other than to fulfill what I believe is the obligation of all U.S. District Judges, which is to faithfully and impartially apply the law and the precedent of the Supreme Court and their circuit to the facts of the cases that come before them. I have not studied the judicial philosophies of recent Supreme Court justices. There are, however, a number of qualities that I admire in judges before whom I have appeared. Among these qualities are intellectual rigor and integrity, preparation, efficiency, and respect for attorneys and litigants. Two judges whom I have observed demonstrate these qualities are Retired Judge James Robertson of the District Court for the District of Columbia and Chief Judge David Norton of the District of South Carolina.

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)?

The Supreme Court has analyzed the original intent and original public meaning of constitutional provisions in deciding the constitutionality of statutes. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008) (examining the public meaning of the Second Amendment at the time of its passage). If confirmed, I will follow that 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: Under no circumstances would I 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 asked to determine whether a particular Federal statute or regulation unconstitutionally infringed upon State sovereign interests, I would assess the statute or regulation against the text and meaning of the relevant constitutional provision, and apply binding D.C. Circuit and Supreme Court precedent, including *Garcia* and other cases dealing with the relationship between Federal and State powers.

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 placed limits on the types of activities that Congress may regulate under the Commerce Clause. Apart from having the power to regulate and protect the channels and instrumentalities of interstate commerce, the Court has held that Congress has the authority to regulate only those activities that “substantially affect” interstate commerce. *See, e.g., United States v. Lopez*, 514 U.S. 549, 558 (1995). While the Court has considered the non-economic nature of the activity in question as a factor in determining whether the activity “substantially affects” interstate commerce, my understanding is that the Court has not held that Congress may never regulate non-economic pursuant to its Commerce Clause power. *See, e.g., Gonzales v. Raich*, 545 U.S. 1, 37 (1995) (Scalia, J., concurring) (noting that Congress may regulate non-economic activity that is an essential part of a larger economic regulatory scheme). If confirmed, I would apply *Lopez*, *Raich* and other binding Supreme Court and D.C. Circuit precedent if I were to confront a question in this area.

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 constrained by the authority granted to him by the Constitution or an act of Congress. *See Medellin v. Texas*, 552 U.S. 491, 524 (2008) (citing *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952)). These limits are judicially enforceable. In addition, the actions of Executive Branch agencies are limited by principles set forth in *Chevron v. Natural Resources Def. Council, Inc.*, 467 U.S. 837 (1984) and subsequent Supreme Court precedent involving challenges to federal agency action.

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

Response: In addition to the rights specifically enumerated in the Bill of Rights, 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. Glucksburg*, 521 U.S. 702, 720-21 (1997) (internal citations omitted). If confirmed, I would follow that established precedent in deciding any cases involving fundamental rights.

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

Response: The Supreme Court has applied strict scrutiny to legislative classifications based on race, alienage, and national origin. *See City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440 (1985). It has applied heightened scrutiny to classifications based on gender and illegitimacy. *Id.* If confirmed, I would apply this established precedent.

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 university admissions, including *Grutter* and the Court’s more recent decision in *Fisher v. Univ. of Texas at Austin*, 133 S. Ct. 2411 (2013), regardless of any personal view or expectation I might have about the continued need for such preferences in the future.