

Questions for Judicial Nominees
Senator Ted Cruz to Daniel D. Crabtree

Describe how you would characterize your judicial philosophy, and identify which US Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: If confirmed, I would approach judging by emulating the characteristics of the best trial judges I have appeared before in years of practice as a trial lawyer. Those characteristics include: impartiality; respect for and adherence to the governing legal principles; command of the rules of civil procedure and rules of evidence; respectful and civil treatment of jurors, litigants, and lawyers; coming to court prepared; and having the will to make decisions when, in the context of the rules of procedure, it is time to make them. I do not feel qualified to liken this this approach to that of any particular Chief Justice or Justice.

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, I would follow Supreme Court and Tenth Circuit precedent using this method of interpretation. I know, for instance, that in certain lead opinions the Supreme Court has used the original public meaning ascribed to terms and words used in the Constitution and its amendments as a method of interpretation. For example, in *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Court analyzed how certain words used in the Second Amendment had been used originally in a variety of legal sources and by those who participated in drafting the provision.

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 have been nominated to serve as a District Court Judge and consequently, if confirmed, it would not be proper for me to 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: This statement in *Garcia* is part of precedent binding on all lower courts and, if confirmed, I would apply it faithfully (along with other pertinent decisions of the Supreme Court and the Tenth Circuit) in cases involving issues of state sovereign interests.

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: To my knowledge, the Supreme Court has not held that non-economic activity necessarily falls outside the scope of the Commerce Clause. But I also understand that the Supreme Court has relied on the non-economic characteristic of the regulated conduct at issue to invalidate two Acts of Congress, concluding that the regulation at issue exceeded the power delegated by the Commerce Clause. *United States v. Morrison*, 529 U.S. 598 (2000); *United States v. Lopez*, 514 U.S. 549 (1995). I am aware that at least one Justice has expressed the view that Congress may regulate non-economic conduct in certain circumstances. *Gonzales v. Raich*, 545 U.S. 1, 33 (2005) (Scalia, J., concurring). If I were confirmed, I would carefully apply Supreme Court and Tenth Circuit precedent to any issues arising under the Commerce Clause.

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

Response: In determining whether the President has acted within the scope of constitutional or statutory authority for executive orders or executive actions, the Supreme Court has established and applied an analytical framework. *Medellín v. Texas*, 552 U.S. 491 (2008). This "tripartite scheme" evaluates whether executive action stems from implied or express authority conferred by Congress, from the President's own independent powers, or is instead incompatible with the expressed or implied will of Congress. If I were confirmed and presented with an issue of this kind, I would apply Supreme Court and Tenth Circuit precedent to resolve the question.

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

Response: The Supreme Court has held that the due process clause protects fundamental rights and liberties which, objectively, are "deeply rooted in [our] Nation's history and tradition" and are "implicit in the concept of ordered liberty" so that liberty and justice would not exist "if they were sacrificed." *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (citations omitted).

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

Response: Under my understanding of current precedent, a classification warrants heightened scrutiny when it uses suspect classifications or burdens fundamental rights such as the right to vote. The Supreme Court has identified the reasons certain classifications warrant heightened scrutiny, *e.g.*, heightened scrutiny for classifications based on race, alienage, national origin, and sex but not for classifications based on age or intellectual disabilities. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 441-47 (1985).

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 feel qualified to predict the governing state of the law on this question 15 years from now. If this statement were germane to a future case, its significance would be a subject for argument and analysis at that time. I would apply, if confirmed, the holding in *Grutter*, *Fisher v. Univ. of Texas*, 133 S. Ct. 2411 (2013), and any other Supreme Court or Tenth Circuit precedent that might bear on any question arising from a public school's decision to consider an applicant's race in the admissions process.