

Senator Cruz
Questions for the Record

Waverly D. Crenshaw, Jr.
Nominee, United States District Judge for the Middle District of Tennessee

Judicial Philosophy

1. Describe how you would characterize your judicial philosophy?

Response: I have not served as a judge so I don't have a judicial philosophy. I have served as a Hearing Officer for several years for the Tennessee Supreme Court's Board of Professional Responsibility that renders decisions on ethical complaints against attorneys. In that role, I maintain an open mind listening to testimony of witnesses, parties and experts. Based on the ethical rule at issue, I apply the rule to the facts to make a decision on whether an ethical violation has occurred. I anticipate that I would follow a similar approach, if I am confirmed as a district judge.

2. How does a responsible judge interpret constitutional provisions, such as due process or equal protection, without imparting his own values to these provisions?

Response: When a case requires interpretation of a constitutional provision, I will focus on the plain language of the constitutional provision at issue. My analysis would be guided by decisions on constitutional interpretation by the Supreme Court and the Sixth Circuit Court of Appeals. By doing so, I will remain faithful to the rule of law that is at the foundation of our legal system and insures that any personal opinions do not intrude on the judicial decision making process.

3. With the assumption that you will apply all the law announced by the Supreme Court, please name a Warrant Court, Burger Court, and Rehnquist Court precedent that you believe was wrongly decided - but would nevertheless faithfully apply as a lower court judge. Why do you believe these precedents were wrongly decided?

Response: If I am fortunate to be confirmed as a district judge it would not be my role to explore whether a Supreme Court decision was wrongfully decided. The doctrine of stare decisis requires that I apply and follow Supreme Court decisions. Any personal views I might have would play no role in the judicial decision making process.

4. Which sitting Supreme Court Justice do you most want to emulate?

Response: Any person who becomes a Supreme Court Justice is entitled to respect. I do not have sufficient knowledge of the current Supreme Court Justices to select one over another. In my judgment, each is entitled to respect and the decisions of the Supreme Court must be followed without question.

- 5. 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, other)?**

Response: The Supreme Court in District of Columbia v. Heller, 554 U.S. 570 (2008) considered the original public meaning of the Second Amendment when interpreting that provision. As a district judge, if confirmed, I would follow Heller and other controlling precedent of the Supreme Court and the Sixth Circuit Court of Appeals on issues of constitutional interpretation.

- 6. What role, if any should the constitutional rulings and doctrines of foreign courts and international tribunals play in the interpretation of our Constitution and laws?**

Response: None

- 7. What are your views about the role of federal courts in administering institutions such as prisons, hospitals, and schools?**

Response: Federal courts are courts of limited jurisdiction. Decisions of federal courts that affect institutions such as prisons, hospitals, and schools are confined by the Constitution, federal statutes and decisions of the Supreme Court and the Circuit Courts of Appeals. Any personal views would play no role in the judicial decision making process.

- 8. What are your views on the theory of a living Constitution, and is there any conflict between the theory of a living Constitution and the doctrine of a judicial restraint?**

Response: I have not studied the legal theory of a living Constitution. If confirmed, I would decide cases on the issues presented and base my decision on statutory text and legal precedent as established by the Supreme Court and the Sixth Circuit Court of Appeals, without regard to any personal views, opinions, or beliefs that have no role in the judicial decision making process.

- 9. What is your favorite Supreme Court decision on the past 10 years, and why?**

Response: I have not reviewed or studied all of the decisions of the Supreme Court to select a favorite.

- 10. Please name a Supreme Court case decided in the last 10 years that you would characterize as an example of judicial activism.**

Response: I understand judicial activism to be when a judge allows his or her personal views to predetermine a decision or reach an issue that is not necessary to resolve the case. As a nominee, it would not be appropriate for me to criticize decisions of the Supreme Court that I would be obligated to follow if I am fortunate enough to be confirmed as a district judge.

- 11. What is your definition of natural law, and do you believe there is any room for using natural law in interpreting the Constitution or statutes?**

Response: I understand that the phrase “natural law” has a variety of definitions and meanings. If confirmed, I will faithfully apply the decisions of the Supreme Court and the Sixth Circuit Court of Appeals.

Congressional Power

- 12. 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: The Supreme Court’s decision in *Garcia v. San Antonio Metro Transit Authority*, 469 U.S. 528 (1985), is binding precedent that I would follow regardless of any personal views.

- 13. 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 addressed the scope of the Commerce Clause power in several decisions, such as *United States v. Lopez*, 514 U.S. 549 (1995) (identifying three areas of activity that Congress may regulate under the Commerce Clause), that are binding precedent, which I would follow regardless of any personal views.

- 14. What limits, if any, does the Constitution place on Congress’ ability to condition the receipt and use by states of federal funds?**

Response: In *South Dakota v. Dole*, 483 U.S. 203 (1987), the Supreme Court held that the only valid conditions that Congress may impose on the State’s receipt of federal funds are: 1) when the condition is attached to expenditures that benefit the general welfare; 2) when the condition is unambiguous; 3) when it is reasonably related to the purpose of the expenditure to which the condition is attached; and 4) when the condition is in violation of the Constitution. If confirmed, I will follow this decision and all other binding precedent of the Supreme Court and the Sixth Circuit Court of Appeals on this issue.

- 15. Is Chief Justice Roberts’ decision in *NFIB v. Sebelius*, 132 S. Ct. 2566 (2012), on the Commerce Clause and Necessary and Proper Clause binding precedent?**

Response: In *NFIB v. Sebelius*, five justices concluded that Congress did not have sufficient authority under the Commerce Clause and Necessary and Proper Clause to pass the Affordable Care Act. The Sixth Circuit has suggested that the Commerce Clause analysis in *Sebelius* is a holding. *United States v. Rose*, 714 F.3d 362, 371 (2013). The absence of a single opinion supported by five justices has created confusion among courts. In such situations, the Supreme Court in *Marks v. United States*, 430 U.S. 188 (1977), has directed that “the holding of the Court may be viewed as that position taken by those Members who

concurring in the judgment on the narrowest grounds.” *Id.* 193 (internal quotation marks omitted).

Presidential Power

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

Response: The Supreme Court has ruled that the President’s authority to issue executive orders or actions must flow from an Act of Congress or the Constitution. *See, e.g., Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952). If confirmed, I would apply Supreme Court and Sixth Circuit Court of Appeals decisions on this issue.

17. Does the President possess any unenumerated powers under the Constitution, and why or why not?

Response: The Supreme Court has ruled that the President’s powers must derive from an Act of Congress or the Constitution. *Medellin v. Texas*, 552 U.S. 491, 524 (2008). If confirmed, I will apply Supreme Court and Sixth Circuit Court of Appeals precedent on this issue.

Individual Rights

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

Response: The Supreme Court has held that a right is fundamental when it is “deeply rooted in this Nation’s history and tradition and implicit in the concept of ordered liberty.” *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (internal citations and quotations omitted). If confirmed, I will follow this decision and all binding precedent of the Supreme Court and the Sixth Circuit Court of Appeals in similar cases.

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

Response: The Supreme Court has held that classifications based on race, gender, national origin or alienage are subject to heightened scrutiny under the Equal Protection Clause. *See, e.g., City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440 (1985). If confirmed, I will apply Supreme Court and Sixth Circuit Court of Appeals precedent on this issue.

20. 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: The Supreme Court’s decision in *Grutter v. Bollinger* is binding precedent that I will apply regardless of any personal views or expectations, that have no place in the judicial decision making process.

21. To what extent does the Equal Protection Clause tolerate public policies that apportion benefits or assistance on the basis of race?

Response: The Supreme Court in Fisher v. University of Texas at Austin, 133 S. Ct. 2411 (2013), held that strict scrutiny analysis applies to determine whether using race in the context of college admissions is proper, which includes public policies that apportion benefits on the basis of race. If I am confirmed, I will apply this and other binding Supreme Court and Sixth Circuit Court of Appeals precedent.

22. Does the Second Amendment guarantee an individual right to keep and bear arms for self-defense, both in the home and in public?

Response: The Supreme Court has held in District of Columbia v. Heller, 554 U.S. 570 (2008), that the Second Amendment guarantees individuals the right to keep and bear arms for self-defense in the home. The Sixth Circuit Court of Appeals has observed that the Supreme Court has not “fleshed out” the full extent of the right protected by the Second Amendment, Tyler v. Hillsdale County Sheriff’s Department, 775 F.2d 308, 316 (2014), although it has noted five Circuit Courts of Appeal have recognized the right to carry guns outside of the home. If confirmed, I will follow the decisions of the Supreme Court and the Sixth Circuit Court of Appeals on issues arising under the Second Amendment right to bear arms.