

Written Questions of Senator Ted Cruz

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Nominee, United States District Judge for the Middle District of Louisiana

U.S. Senate Committee on the Judiciary

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Judicial Philosophy

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: Although I have read opinions handed down by the Warren, Burger and Rehnquist Courts, I have not studied the individual justices to a degree that would enable me to accurately characterize a particular justice's philosophy as analogous to my own. I believe there are several facets and characteristics that are fundamental to a sound judicial philosophy, including thoughtfulness, careful deliberation, thorough research and commitment to the rule of law and the principle of stare decisis.

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: I am not a student of the various doctrinal forms of originalism and thus I am not equipped to comment upon the intricacies of those distinctions. However, I believe that the first step in the construction of any constitutional provision is the plain language of the provision itself. If the plain language is subject to different interpretations or ambiguous then it is appropriate to consider the original intent of the drafters. As stated by the United States Supreme Court in 1838 "the proper mode of considering [an] article of the constitution, in relation to the judicial power, is to take the constitution as a whole, and keep constantly in mind the grand design and intention of its framers". *State of Rhode Island v. Massachusetts*, 37 U.S. 657, 673 (1838). I am also aware that in *Dist. of Columbia v. Heller*, 554 U.S. 570, 634-35 (2008), Justice Scalia opined that "Constitutional rights are enshrined with the scope they were understood to have when the people adopted them". If confirmed as a District Court judge I will look to and apply the constitutional construction guidelines enunciated by the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit.

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 Court judge, under no circumstance would I overrule precedent of the United States Supreme Court or the United States Court of Appeals for the Fifth Circuit.

Congressional Power

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: As recognized by the United States Supreme Court in *Garcia* and other cases, the States retain all authority not divested by the United States Constitution. If confirmed as a District Court judge I would be obliged to apply United States Supreme Court precedent that addresses the limits on federal powers and state sovereignty, including *Garcia* as well as *New York v. U.S.* 505 U.S. 144 (1992), *Printz v. U.S.* 521 U.S. 898 (1997), *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996) and *Alden v. Maine*, 527 U.S. 706 (1999).

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

Response: According to recent United States Supreme Court precedent, Congress may regulate purely local non-economic activity if the failure to regulate the activity at issue would "undercut" the regulation of an interstate market. *Gonzales v. Raich*, 545 U.S. 1, 18 (2005). If confirmed as a District Court judge I would be bound by the relevant precedent of the United States Supreme Court including *U.S. v. Lopez*, 514 U.S. 549 (1995), *U.S. v. Morrison*, 529 U.S. 598 (2000), and *Gonzales v. Raich*, 545 U.S. 1 (2005).

Presidential Power

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

Response: In *Youngstown Sheet and Tube Co. v. Sawyer*, 342 U.S. 579, 585 (1952), the United States Supreme Court held that the President's authority to issue executive orders derives from either an act of congress or the Constitution. Thus, an executive order or action that is not founded upon congressional authority or the Constitution may be declared unenforceable by the judicial branch.

Individual Rights

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

Response: For purposes of substantive due process protection, fundamental rights include those rights enumerated in the Bill of Rights and those liberties that the United States Supreme Court has found to be "deeply rooted in this Nation's history and traditions". *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997).

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

Response: The Equal Protection Clause of the United States Constitution prohibits States from denying equal protection to any person. The United States Supreme Court has interpreted this as requiring that "similarly situated" persons be treated equally. *Plyler v. Doe*, 457 U.S. 202, 216 (1982). Race, alienage, national origin and gender are examples of State classifications that require heightened scrutiny. *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432 (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 am aware that in 2003, Justice O'Connor, writing for the United States Supreme Court, observed that in time the use of racial preferences in admission practices in higher education may no longer be necessary. I am aware that the United States Supreme Court is currently considering the constitutionality of affirmative action in university admissions, *Fisher v. University of Texas*, 132 S.Ct. 1536 (Feb. 21, 2012). Thus, as a prospective district court judge I believe it would be inappropriate for me to offer any opinion on the Court's statements in *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).