

**Senator Ted Cruz
Questions for the Record**

**Elizabeth K. Dillon
Nominee, U.S. District Judge for the Western District of Virginia**

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: I have not studied the judicial philosophies of the Justices of the Warren, Burger, or Rehnquist Courts; however, if I am confirmed as a district court judge, my judicial philosophy would be to adhere to the precedent of the Supreme Court of the United States and the Fourth Circuit Court of Appeals and to apply the applicable law to the specific facts presented to me and to then reach well-reasoned, clear, and prompt decisions.

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: The Supreme Court of the United States stated that, in interpreting the Constitution, “we are guided by the principle that ‘[t]he Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning.’” *District of Columbia v. Heller*, 554 U.S. 570, 576 (2008) (quoting *United States v. Sprague*, 282 U.S. 716, 731 (1931)). If confirmed, I would follow this precedent and use the original public meaning to interpret 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 a decision is precedent today, I would not overrule the decision as a judge; rather, I would be bound by the decision and would follow it.

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: Regardless of any personal beliefs, if I am confirmed as a district court judge, I will follow the precedent set forth by the Supreme Court of the United States in *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985), as I would all Supreme Court precedents.

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 found certain statutes to be unconstitutional in some circumstances where the regulated activity was determined to be non-economic. *United States v. Morrison*, 529 U.S. 598 (2000); and *United States v. Lopez*, 514 U.S. 549 (1995). In deciding a case involving non-economic activity and Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, I would be bound by and adhere to the precedent of the Supreme Court of the United States and the Fourth Circuit Court of Appeals including *Gonzales v. Raich*, 545 U.S. 1 (2005); *United States v. Morrison*, 529 U.S. 598 (2000); and *United States v. Lopez*, 514 U.S. 549 (1995).

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

Response: According to decisions of the Supreme Court of the United States, the President's ability to issue executive orders or executive actions "must stem either from an act of Congress or from the Constitution itself." *Medellin v. Texas*, 552 U.S. 491, 525 (2008) (quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952)). Should I be confirmed, I would adhere to these precedents and any Fourth Circuit Court of Appeals' precedent.

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

Response: I would follow the precedent of the Supreme Court of the United States and the Fourth Circuit Court of Appeals in determining whether a right is fundamental for purposes of the substantive due process doctrine. According to Supreme Court precedent, a right is fundamental when it is a right that is "fundamental to our scheme of ordered liberty and system of justice," *McDonald v. City of Chicago*, 130 S. Ct. 3020, 3034 (2010), and is "deeply rooted in the Nation's history and tradition" and is "implicit in the concept of ordered liberty," *Chavez v. Martinez*, 538 U.S. 760, 775 (2003) (quoting *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997)).

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

Response: I would follow the precedent of the Supreme Court of the United States and the Fourth Circuit Court of Appeals in determining when a classification is subject to heightened scrutiny under the Equal Protection Clause. According to the Supreme Court of the United States, a classification is subjected to strict scrutiny under the Equal Protection Clause when a fundamental right is burdened or when the classification is based upon race, national origin, or alienage, and a classification based upon gender or illegitimacy is subject to intermediate scrutiny. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440-41 (1985); *United States v. Virginia*, 518 U.S. 515, 531-33 (1995).

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: Regardless of my personal expectations, if any, if I am confirmed as a district court judge, I will follow the precedent of the Supreme Court of the United States, including *Grutter v. Bollinger*, 539 U.S. 306 (2003), and *Fisher v. University of Texas*, 133 S. Ct. 2411 (2013), and the Fourth Circuit Court of Appeals with regard to racial preferences in public higher education.