

Questions for the Record for all nominees
Senator Ted Cruz

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: My judicial philosophy is grounded in the concept of respect: respect for the rule of law, respect for litigants, respect for the institution of the court, and respect for the balance of powers. Respect for the rule of law cabins every decision that I make as a judge. Respect for litigants gives lawyers and their clients (and *pro se* litigants) freedom to choose their strategies and develop their cases within the bounds of the rules of procedure and evidence. Respect for the institution of the court demands that I engage in no conduct that impugns the integrity of the court. Respect for the balance of powers among our three co-equal branches of government requires that I exercise only the powers of judicial office and that I leave to the legislative and executive branches of government the work that the Constitution assigns to them. I am not sure which Justice's judicial philosophy is most analogous to mine.

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: At times, the United States Supreme Court and the Eleventh Circuit Court of Appeals have considered originalism in resolving issues that require interpretation of the United States Constitution. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008). In conducting a constitutional analysis as a magistrate judge, or, if confirmed, as a district court judge, I will weigh arguments regarding originalism when binding precedent directs its consideration.

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, I will apply the precedent that is binding when I issue an opinion. Consequently, I would not overrule any precedent today. If the United States Supreme Court or the Eleventh Circuit Court of Appeals expands, contracts, or overturns a decision that is binding precedent today, I will follow the precedent that is in place when I resolve an issue.

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: Respectfully, as a judge, my personal beliefs on this or any topic are irrelevant. I am bound to follow *Garcia* just as I am bound to follow all other precedent from the United States Supreme Court and the Eleventh Circuit Court of Appeals.

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

Response: The United States Supreme Court has, “identified three broad categories of activity that Congress may regulate under its commerce power.” *United States v. Lopez*, 514 U.S. 549, 558 (1995). “First, Congress may regulate the use of the channels of interstate commerce. Second, Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities. Finally, Congress’ commerce authority includes the power to regulate those activities having a substantial relation to interstate commerce.” *Id.* at 558-59; *see also United States v. Morrison*, 529 U.S. 598 (2000).

With respect to non-economic activity, the Supreme Court has not definitively established a bright line rule. In his concurring opinion in *Gonzales v. Raich*, 545 U.S. 1 (2005), Justice Scalia wrote that, “Congress’s authority to enact laws necessary and proper for the regulation of interstate commerce is not limited to law directed against economic activities that have a substantial effect on interstate commerce. Though the conduct in *Lopez* was not economic, the Court nevertheless recognized that it could be regulated as ‘an essential part of a larger regulation of economic activity, in which the regulatory scheme could be undercut unless the intrastate activity were regulated.’ . . . The relevant question is simply whether the means chosen are ‘reasonably adapted’ to the attainment of a legitimate end under the commerce power.” *Id.* at 36-37 (Scalia, J., concurring) (quoting *United States v. Lopez*, 514 U.S. 549, 561 (1985)).

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

Response: Article II establishes the constitutional limits on the President’s powers. Federal statutes may delegate specific authority to the President. When a person with standing challenges an executive order, a court may consider whether Article II or a particular statute enables the President to issue the order. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1942) (“The President’s power, if any, to issue the order must stem either from an act of Congress or from the Constitution itself.”). The President has certain implied and inherent powers, but those powers derive from the Constitution or from statutory authority. If a person challenges an executive order or action, and the President contends that he was exercising his implied or inherent authority, then a court must determine whether that authority is rooted in the Constitution or in federal legislation. *Id.*

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

Response: The Supreme Court has held that the “established method of substantive-due-process analysis has two primary features: First, we have regularly observed that the Due Process Clause specially protects those fundamental rights and liberties which are, objectively, ‘deeply rooted in this 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. Second, we have required in substantive-due-process cases a ‘careful description’ of the asserted fundamental liberty interest. Our Nation’s history, legal traditions, and practices thus provide the crucial ‘guideposts for responsible decisionmaking’ that direct and restrain our exposition of the Due Process Clause.” *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (citations omitted). Were a party to ask the Court to decide whether a particular right is fundamental for purposes of the substantive due process doctrine, I would use this precedent and precedent from the Eleventh Circuit Court of Appeals in evaluating the parties’ arguments concerning the issue presented.

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

Response: Binding precedent provides that a district court should examine a classification using heightened scrutiny under the Equal Protection Clause when the classification is suspect (*i.e.*, one involving race, gender, alienage, or national origin). *See, e.g., City of Cleburne, Tex. 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: If faced with a case concerning alleged racial preferences in public education, either as a magistrate judge or, if confirmed, as a district court judge, I will apply *Fisher v. Univ. of Texas*, No. 11-345, 2013 WL 3155220 (S. Ct. June 24, 2013), *Grutter v. Bollinger*, 539 U.S. 306 (2003), and any other binding precedent relating to the issue.