

Questions for the Record
Senator Ted Cruz

Responses of David J. Hale
Nominee, United States District Judge for the Western District of Kentucky

- 1. 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 never served as a judge and accordingly I have not developed a specific judicial philosophy. However, if confirmed, I would work hard to be an able and respected District Judge. I would follow applicable precedent from the Supreme Court and the Sixth Circuit Court of Appeals. I would act fairly and impartially in each case that comes before me. I would treat litigants, lawyers and members of the public fairly and respectfully. I would decide cases in a timely manner.

With respect to identifying analogous judicial philosophies, I have not studied the opinions of the Warren, Burger or Rehnquist Courts sufficiently enough to be able to determine which Justice’s judicial philosophy I would consider most like mine.

- 2. 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: Yes. Consistent with the Supreme Court’s holding in cases such as *District of Columbia v. Heller*, 554 U.S. 570 (2008), I would look to the original public meaning in interpreting the Constitution. If confirmed, I would apply *Heller* and all other binding precedent from the Supreme Court and the Sixth Circuit Court of Appeals.

- 3. 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, I would not overrule binding precedent.

- 4. 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: If confirmed, I would follow *Garcia* as well as all other binding precedent from the Supreme Court and the Sixth Circuit Court of Appeals, without regard to my personal views.

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

Response: In *United States v. Lopez*, 514 U.S. 549 (1995), the Supreme Court held that a statute criminalizing firearm possession in a local school zone exceeded Congress' Commerce Clause power. The Supreme Court enumerated three broad categories of activity which Congress may regulate pursuant to the Commerce Clause: 1) "the use of the channels of interstate commerce"; 2) "the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities"; and 3) "activities having a substantial relation to interstate commerce." *Id.* at 558 (internal citations omitted); *see also United States v. Morrison*, 529 U.S. 598 (2000). If confirmed, I would follow the *Lopez* and *Morrison* holdings, as well as all other binding precedent of the Supreme Court and Sixth Circuit Court of Appeals.

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

Response: In *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952), the Supreme Court stated that the President's authority to issue an executive order or take executive action "must stem from either an act of Congress or from the Constitution itself." If confirmed, I would follow the *Youngstown* holding as well as all other binding precedent of the Supreme Court and the Sixth Circuit Court of Appeals.

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

Response: In *Washington v. Glucksberg*, 521 U.S. 702 (1997), the Supreme Court held that a right is fundamental for the purposes of the substantive due process doctrine where it is "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." *Id.* at 720-21 (internal citations and quotation marks omitted). If confirmed, I will follow the *Washington v. Glucksberg* holding as well as all other binding precedent of the Supreme Court and the Sixth Circuit Court of Appeals.

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

Response: In *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440 (1985), the Supreme Court held that legislative classifications based upon race, alienage, national origin and gender, or laws that impinge on personal rights protected by the Constitution, are subject to heightened scrutiny. If confirmed, I would follow the *City of Cleburne* holding as well as all other binding precedent of the Supreme Court and the Sixth Circuit Court of Appeals.

9. 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 have personal expectations regarding the future use of racial preferences in public higher education. If confirmed, I would follow the *Grutter v. Bollinger* holding as well as all other binding precedent of the Supreme Court and the Sixth Circuit Court of Appeals.