

Questions for the Record
Senator Ted Cruz

M. Douglas Harpool
Nominee, U.S. District Judge for the Western District of Missouri

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: I do not have any particular judicial philosophy. I do believe it is very important for judges to respect judicial precedent. I also believe in judicial restraint which requires courts to only act when presented with an actual case or controversy which is ripe for adjudication and then to issue as narrow a ruling as necessary to resolve the case presented. A trial judge in particular should strictly adhere to judicial precedent established by higher courts. The trial judges I hope to emulate are judges who work hard, aggressively manage their docket, treat all litigants with respect, carefully adhere to court rules, and act impartially.

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: As a trial judge, it would be my responsibility to follow binding case precedent from the Supreme Court and Eighth Circuit with respect to interpretation of the Constitution. The Supreme Court has found that public understanding of text around the time of enactment plays a critical role in Constitutional interpretation, *District of Columbia v. Heller*, 545 U.S. 570, 605 (2008), and I would follow that and other binding precedent.

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 would not overrule established precedent, but would follow the precedent established by higher courts.

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 a district court judge, it would be my obligation to follow case precedent adopted by the United States Supreme Court, including *Garcia*. My personal feelings, if any, would be set aside in order to follow precedent.

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 decided several cases discussing the breadth and application of the Commerce Clause, and in particular, its application to the regulation of non-economic activity. Under court precedent, the Commerce Clause empowers Congress to regulate: (1) the channels of interstate commerce; (2) the instrumentalities of interstate commerce or people or things in interstate commerce; and (3) activity that has a substantial effect on interstate commerce. See, e.g., *United States v. Morrison*, 529 U.S. 598 (2000), *United States v. Lopez*, 514 U.S. 549 (1995). If confirmed and presented with a case concerning the Commerce Clause, I would apply the facts of the case presented to the Supreme Court's analysis in *Morrison*, *Lopez*, and any other applicable Supreme Court precedent.

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

Response: The power of the President to issue executive orders or executive actions and the limits on the authority of the President to act through executive orders or executive actions, can be found in the Acts of Congress and in the United States Constitution. See e.g., *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), *Medellin v. Texas*, 552 U.S. 491 (2008). If confirmed, I would apply these and other pertinent Supreme Court precedent to any case pertaining to the limits of executive power.

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

Response: A right is fundamental for purposes of the substantive due process doctrine when it is "deeply rooted in the nation's history and traditions." See *Washington v. Glucksberg*, 521 U.S. 702 (1997). As a district judge, I would follow all applicable Supreme Court precedent involving alleged infringement of fundamental rights.

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

Response: The Supreme Court has held that strict scrutiny is appropriate in only a narrow set of cases, such as cases involving classifications based on race, *Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989) and that an intermediate scrutiny is appropriate in another narrow set of cases such as those involving classifications based on gender. *United States v. Virginia*, 518 U.S. 515 (1996). See also *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432 (1985) wherein the court discusses when a classification should be subject to heightened scrutiny. As a district court judge, I would follow Supreme Court precedent concerning which classifications require a heightened scrutiny under the Equal Protection Clause.

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 have not formed any expectation concerning the use of racial preferences fifteen years from now. However, as a district judge, I will follow Supreme Court precedent concerning the legality of such racial preferences, including the precedent established by *Grutter v.*

Bollinger, 539 U.S. 306 (2003) and *Fisher v. University of Texas at Austin*, 133 S. Ct. 2411 (2013).