

Questions for the Record
Senator Ted Cruz

Bruce Howe Hendricks,
Nominee, U.S. District Judge for the District of South Carolina

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: Although I do not ascribe to some fully unified judicial philosophy, there are certain rudimentary jurisprudential guidelines I follow, including a commitment to the rule of law, the doctrine of *stare decisis*, respecting the limited jurisdiction of federal courts, judicial economy, and considerations for federalism. My philosophical approach would also include impartiality, fairness, respectfulness, humility, and integrity. I think these principles have been exhibited by many, if not all, of the justices presiding in the courts identified above.

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: My role as a district judge in a case involving constitutional interpretation would be to study the facts of the case before me and apply the applicable precedent to the case, including precedent which considers the original public meaning of the text, as the Supreme Court did in *District of Columbia v. Heller*, 554 U.S. 570 (2008), or the original intent of the drafters.

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: As a district judge, I would never overrule precedent.

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, my personal view of the statement is not relevant. If confirmed to serve as a United States District Judge, I would be bound by the Supreme Court’s decision in *Garcia*. I would apply the holding in that case without regard to whether or not I personally agreed with the decision.

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

Response: United States Supreme Court precedent, including the seminal decision, *United States v. Lopez*, 514 U.S. 549, 558-59 (1995), provides that Congress may regulate under the Commerce Clause in three ways: it may (1) “regulate the use of the channels of interstate

commerce”; (2) “regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce”; and (3) “regulate those activities having a substantial relation to interstate commerce.” *Lopez*, 514 U.S. at 558-59; *see also United States v. Morrison*, 529 U.S. 598 (2000). If confirmed, I would follow the precedent of the Supreme Court and Fourth Circuit in determining the propriety of congressional action pursuant to the Commerce Clause.

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

Response: The Supreme Court spoke on the President’s authority to act in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952) and in *Medellin v. Texas*, 552 U.S. 491, 524 (2008). The Supreme Court has determined that the President’s authority to act must come from either an act of Congress or from the Constitution. If confirmed, I would faithfully follow Supreme Court and Fourth Circuit precedent in deciding any challenge to executive action.

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

Response: In *Washington v. Gluckberg*, 521 U.S. 702, 720-21 (1997) (internal citations omitted), the Supreme Court held that fundamental rights include “the specific freedoms protected by the Bill of Rights,” and “those fundamental rights and liberties which are, objectively, deeply rooted in this Nation’s history and tradition” and which are “implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed.” If confirmed, I would follow Supreme Court and Fourth Circuit precedent in deciding issues concerning fundamental rights.

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

Response: The Supreme Court has identified the immutable and protected classifications which are subject to heightened scrutiny under the Equal Protection Clause. Government action that affects race, alienage, and national origin, is subject to strict scrutiny, while government action that implicates gender and illegitimacy is subject to intermediate scrutiny. *See City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440-41 (1985). If confirmed, I would faithfully follow Supreme Court and Fourth Circuit precedent in determining what classifications are subject to heightened scrutiny under the Equal Protection Clause of the Fourteenth Amendment.

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: Respectfully, I would not express any opinion or projection about the status of racial preferences in public higher education fifteen years from now. Such speculation is beyond my role as magistrate judge or, if confirmed, district judge.