

Questions for the Record for all nominees
Senator Ted Cruz
Response of Todd Hughes

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: The role of a judge is to determine what the law is, relying on applicable constitutional provisions, statutes, judicial precedents, and other legal authorities, and then to apply the law to the facts of the case in a neutral, even-handed and equitable manner. A judge should be respectful of the parties and fully understand all details of the case and the litigants' positions. I have not studied the opinions of any Justice in sufficient detail to determine which Justice's 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: Yes. In interpreting the Constitution, the original understanding of the Framers is a critical tool in determining the meaning of any provision.

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 circuit court judge, I would be bound by all decisions of the Supreme Court and would follow them. I would also be bound by all precedential decisions of the Federal Circuit, unless there is intervening precedent from the Supreme Court. In rare circumstances, a circuit court may convene en banc to overturn prior circuit precedent, but only to resolve conflicting precedent or a question of exceptional importance.

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: The Court in *Garcia* concluded that the structural protections of the Constitution and the federal political process protect state interests. I would follow *Garcia*, and any other relevant Supreme Court precedent, regardless of my personal views.

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

Response: In cases such as *United States v. Morrison*, 529 U.S. 598 (2000), and *United States v. Lopez*, 514 U.S. 549 (1995), the Supreme Court has concluded that there are three categories of activity that Congress can regulate pursuant to its powers under the Commerce Clause: (1) the channels of interstate commerce, (2) the instrumentalities of interstate commerce, and (3) those activities having a substantial relationship to interstate commerce. I would follow the Supreme Court's precedents in *Morrison* and *Lopez*. In striking down the statutes at issue in *Morrison* and *Lopez*, the Supreme Court especially focused on the non-economic character of the activities at issue.

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

Response: The President's executive authority is set forth and limited by the Constitution. Those limits would be judicially enforceable in the context of a case or controversy within the Judiciary's authority. In *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), the Supreme Court held that the President's authority must be based on either the Constitution or an act of Congress. In his concurring opinion, Justice Jackson further elaborates that the President's actions are strongest when he acts pursuant to express or implied authorization of Congress; weakest when he acts contrary to the will of Congress; and in an intermediary zone when he acts in the absence of either a congressional grant or denial of authority. *Id.* at 635-37.

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, 720 (1997), the Supreme Court held that the Due Process Clause protects "those fundamental rights 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.'"

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

Response: The Supreme Court applies strict scrutiny to classifications based on race, national identity, or national origin. Intermediate scrutiny applies to classifications based on gender and illegitimacy.

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 no personal views regarding this subject nor would my personal views be relevant to any case involving the use of racial preferences in public education. I would be bound by *Grutter*, *Fisher v. University of Texas at Austin*, __ S. Ct. __, 2013 WL 3155220 (2013), and any subsequent binding precedent.