

Questions for the Record
Senator Ted Cruz

Responses from M. Hannah Lauck,
Nominee, United States District Judge for the Eastern District of Virginia

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 cannot say that my approach to judging can readily be captured in a word describing a judicial philosophy. I do, however, approach judging with certain principles in mind. I exhibit a strong commitment to *stare decisis* and the rule of law, I respect the limited role of the federal courts within the separate branches of government, and I seek to apply binding law to the facts in a fair and impartial manner. I work hard and attend court prepared, approaching each matter mindful of how important the case is to the litigants. I also hear cases with an open mind, seeking to give each litigant a fair shot within the appropriate constraints that binding precedent places on all of us. While I do not claim to know the philosophies of the justices of the Warren, Burger, or Rehnquist courts sufficiently well to compare my approach to any of theirs, I believe that many, if not all, of the justices presiding in those courts might likely embrace the practices I describe.

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: If confirmed as a district judge, I would follow the precedent of the United States Supreme Court and the United States Court of Appeals for the Fourth Circuit, including the analysis in cases such as *District of Columbia v. Heller*, 554 U.S. 570 (2008), where the Court considered the original public meaning of the text.

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 judge, I would not, and could not, 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: If confirmed as a district judge, I would be bound by, and would follow, the Supreme Court’s decision in *Garcia* without regard to any personal agreement or disagreement with its reasoning. This would be true of any Supreme Court or Fourth Circuit case.

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 dictates that the Commerce Clause allows congressional regulation of commerce in three ways: Congress 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." *United States v. Lopez*, 514 U.S. 549, 558-59 (1995); *see also United States v. Morrison*, 529 U.S. 598 (2000). If confirmed, I would follow binding Supreme Court and Fourth Circuit precedent in assessing the scope of congressional authority under 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 has articulated the judicially enforceable limits on the President's authority to act in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952) and *Medellin v. Texas*, 552 U.S. 491, 524 (2008). Those cases provide that the President's authority to act must flow either from an act of Congress or from the Constitution. If confirmed, I would apply that Supreme Court precedent and any Fourth Circuit precedent defining the limits of executive action.

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

Response: The Supreme Court has held that rights are "fundamental" for purposes of substantive due process when they are freedoms protected by the Bill of Rights that are "objectively, deeply rooted in this Nation's history and tradition" and are "implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed." *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (internal citations omitted) (internal quotation marks omitted). If confirmed, I would follow Supreme Court and Fourth Circuit precedent in deciding issues concerning whether a right is "fundamental" for purposes of the substantive due process doctrine.

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

Response: The Supreme Court has held that government actions affecting the immutable and protected classifications of race, alienage, and national origin are subject to strict scrutiny under the Equal Protection Clause, while government actions implicating gender and illegitimacy are subject to intermediate scrutiny. *See City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440-41 (1985). If confirmed, I would 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, as a magistrate judge or if confirmed as a district judge, I would not express any opinion or projection as to the status of racial preferences in public higher education 15 years from now. If confirmed, I would, impartially and objectively, apply the binding precedent established in *Grutter* and in the Supreme Court’s recent decision of *Fisher v. Univ. of Tex. at Austin*, 133 S. Ct. 2411 (2013), as well as any Fourth Circuit decisions, when addressing racial preferences in public higher education.