

Questions for the Record
Senator Ted Cruz

Responses of Matthew F. Leitman
Nominee, United States District Court for the Eastern District of Michigan

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: My judicial philosophy is to approach each case impartially, to focus carefully and narrowly on the issues presented, and to decide each case by applying governing precedent to the facts of the case. I have not studied the judicial philosophies of any individual justices in sufficient detail to determine which of their philosophies is most analogous to mine. I have tremendous respect for the Supreme Court as an institution and would faithfully apply all of its decisions to the cases before me.

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 I am fortunate enough to be confirmed, when confronted with a case presenting a question of constitutional interpretation, I would be guided by the precedents of the Supreme Court and the United States Court of Appeals for the Sixth Circuit concerning the proper framework for resolving constitutional questions. I am aware that in *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court looked to the original understanding of the constitutional text by ordinary citizens at the time of its adoption in resolving a constitutional question, and I am committed to following *Heller* and other binding constitutional interpretation 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: As a district judge, I would not overrule a 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: The Supreme Court’s decision in the *Garcia* case is binding precedent that all district judges are required to follow and apply. If confirmed, I would follow *Garcia* (and other relevant precedents from the Supreme Court and Sixth Circuit) where applicable.

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

Response: If confirmed and presented with a case concerning the extent of Congress' power under the Commerce Clause, I would follow applicable Supreme Court and Sixth Circuit precedent. I am aware that in *United States v. Lopez*, 514 U.S. 549, 558-559 (1995), the Supreme Court acknowledged that under the Commerce Clause, Congress may regulate: (1) the use of the channels of interstate commerce; (2) the instrumentalities of interstate commerce; and (3) activities that have a substantial relation to interstate commerce. *See also United States v. Morrison*, 529 U.S. 598, 608-09 (2000). I also recognize Justice Scalia's conclusion in *Gonzales v. Raich*, 545 U.S. 1, 37 (2005) (Scalia, J., concurring in the judgment), that under the Supreme Court's precedents "Congress may regulate even noneconomic local activity if that regulation is a necessary part of a more general regulation of interstate commerce."

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

Response: The Supreme Court has explained that "[t]he President's authority to act, as with the exercise of any government power, 'must stem either from an act of Congress or from the Constitution itself.'" *Medellin v. Texas*, 552 U.S. 491, 524 (2008) (quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952) (Jackson, J., concurring)). If confirmed, I would follow *Medellin* and other relevant Supreme Court and Sixth Circuit precedent concerning the extent of the President's authority.

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

Response: According to the Supreme Court, a right is "fundamental" for purposes of the Due Process Clause if it is "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.'" *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997) (citations omitted). If confirmed, I would follow Supreme Court and Sixth Circuit precedent regarding the determination of whether a right is "fundamental" for substantive due process purposes.

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

Response: The Supreme Court has held that "equal protection analysis requires strict scrutiny of a legislative classification only when the classification impermissibly interferes with the exercise of a fundamental right or operates to the peculiar disadvantage of a suspect class." *Mass. Bd. of Retirement v. Murgia*, 427 U.S. 307, 312 (1976).

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: The Supreme Court addressed the issue of racial preferences in higher education in *Grutter* and, more recently, in *Fisher v. University of Texas at Austin*, 133 S.Ct. 2411 (2013). If confirmed, I would follow and apply *Grutter* and *Fisher*.