

Questions for the Record
Senator Ted Cruz

Judith Ellen Levy
Nominee, U.S. District Judge 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: I believe that a judge should approach each case with an open mind and be fair, impartial, and respectful to all participants in the process. A district court judge should also apply established law to the facts in each case in order to reach a carefully reasoned and well-articulated decision.

I am most familiar with the judges I practice in front of and I have not studied the judicial philosophies of Supreme Court Justices on the Warren, Burger or Rehnquist Courts.

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: I believe that constitutional interpretation should be undertaken by following Supreme Court and Sixth Circuit precedent. For example, the Supreme Court has applied originalism, and specifically, original public meaning, in cases including *District of Columbia v. Heller*, 554 U.S. 570 (2008). I would follow Supreme Court precedent in all cases.

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: I cannot think of any circumstance in which I would overrule precedent as a district court judge.

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, I would follow the Supreme Court's decision in *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528 (1985), which held that certain provisions of the Fair Labor Standards Act were constitutional. However, after the *Garcia* case, in *Printz v. United States*, 521 U.S. 898 (1997), and *New York v. United States*, 505 U.S. 144 (1992), the Supreme Court struck down the imposition of federal regulations related to the purchase of guns and the handling of low level radioactive waste upon states. If confirmed, I would faithfully apply these

decisions and any other relevant Supreme Court or Sixth Circuit precedent applicable to the balance between federal and state sovereign powers as set forth in the Constitution.

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

Response: The Supreme Court set forth parameters for analyzing the constitutionality of a statute enacted pursuant to the Commerce Clause in *United States v. Morrison*, 529 U.S. 598, 610-611, 613 (2000), and *United States v. Lopez*, 514 U.S. 549, 560-561, 566-567 (1995). In both of those cases, the Court struck down acts of Congress and highlighted the non-economic nature of the activity that Congress had sought to regulate. However, the Court did not hold that non-economic activity can never be regulated by an act of Congress, and in *Gonzales v. Raich*, 545 U.S. 1 (2005), Justice Scalia explained that “even non-economic activity . . . that is a necessary part of a more general regulation of interstate commerce” can properly be regulated. *Id.* at 37 (Scalia, J., concurring). If I am confirmed, and a case presenting this issue came before me, I would apply all relevant precedents from the Supreme Court and the Sixth Circuit.

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

Response: The general standard for evaluating the President's ability to issue executive orders or actions is set forth in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635-638 (1952), (Jackson, J. concurring). In order to issue an executive order or take executive action, the President must have the power directly derived from the Constitution or directly given to the President through an act of Congress. *See Id.* at 585.

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

The Supreme Court has identified rights as “fundamental” when they 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 exist if they were sacrificed.’” *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (citations omitted).

If I am confirmed as a district court judge, I would follow Supreme Court precedent to determine whether the Court had characterized a particular right as “fundamental.” If the Supreme Court has not ruled on the particular right at issue, I would follow Sixth Circuit precedent.

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

Response: The Supreme Court has held that a classification should be subjected to heightened scrutiny under the Equal Protection Clause when it classifies based on race, alienage, national origin, or gender. The Court has also ruled that heightened scrutiny should be applied when a classification burdens a right the Court has identified as “fundamental.”

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: If faced with a case raising the issue of the use of racial preferences in admissions decisions by institutions of public higher education, I would apply all applicable Supreme Court and Sixth Circuit precedent, including *Grutter v. Bollinger*, 539 U.S. 306 (2003) and *Fisher v. University of Texas*, 133 S.Ct. 2411 (2013). If confirmed to serve as a district court judge, my personal views and expectations would play no role in deciding a case on this or any other issue.