

Questions for the Record
Senator Ted Cruz

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Nominee, United States District Court for the Western District of Tennessee

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 do not have a judicial philosophy per se, but rather I have a philosophy on the best ways to efficiently and effectively approach the job of a district court judge. If confirmed, the greatest influence in how I would approach the work is the Honorable Julia S. Gibbons of the United States Court of Appeals for the Sixth Circuit. I clerked for Judge Gibbons when she presided in the Western District of Tennessee, and witnessed her respect for the litigants and their cases, dedication to hard work and fairness, tendency toward clear and plain spoken rulings, and the approachable yet professional manner in which she ran the courtroom. If confirmed, I would strive to emulate her approach.

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: The United States Supreme Court used originalism to interpret the Second Amendment in *District of Columbia v. Heller*, 554 U.S. 570 (2008). As the Court explained, public meaning of the text at the time of its enactment guides the interpretation today. *Id.* at 605. If confirmed, I would follow this binding precedent, as I would all other binding 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: There are no circumstances under which I would 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: *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528 (1985), is binding Supreme Court precedent that I would follow if confirmed, regardless of whether I agree with the statement.

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

Response: Congress may rely upon its Commerce Clause power to regulate three categories of activity: (1) the use of the channels of interstate commerce; (2) the instrumentalities of interstate

commerce; and (3) activities having a substantial relation to interstate commerce. *See Gonzales v. Raich*, 545 U.S. 1 (2005); *United States v. Morrison*, 529 U.S. 598 (2000); *United States v. Lopez*, 514 U.S. 549 (1995). If confirmed, I will follow these binding Supreme Court cases, as well as any applicable Sixth Circuit cases.

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

Response: The United States Supreme Court has held that “[t]he President’s authority to act, as with the exercise of any governmental 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 (1952)). If confirmed, I will apply this precedent to evaluate executive orders or actions.

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

Response: Fundamental rights, for purposes of the substantive due process doctrine, are those rights that 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.’” *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (internal citations omitted). If confirmed, any analysis of a fundamental right would be founded upon this precedent as well as other Sixth Circuit and Supreme Court precedent in this area.

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

Response: When statutory classifications are based on race, alienage, national origin or gender, the statute is subject to heightened scrutiny under the Equal Protection Clause. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985). Generally, strict scrutiny is applied to race, alienage and national origin classifications while an intermediate level of scrutiny is applied to gender classifications.

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 confirmed, my personal expectations in this area, or in any other area, would not be relevant. *Grutter v. Bollinger*, 539 U.S. 306 (2003), as well as *Fisher v. University of Texas*, 570 U.S. ___ (2013), are binding Supreme Court precedent that I will follow, if confirmed to be a United States District Judge.