

Questions for the Record
Senator Ted Cruz

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Nominee, U.S. District Judge for the District of Massachusetts

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: If confirmed, the philosophy that would guide me is that all judicial actions must promote and honor the fundamental principles of fairness, integrity and respect for the law. I have an insufficiently detailed understanding of the philosophies and practices of individual justices to make an analogous comparison.

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 Supreme Court in *District of Columbia v. Heller*, 554 U.S. 570 (2008) recognized that the public understanding of the Constitution, at the time it was ratified, is an important consideration relative to constitutional interpretation. If confirmed, I will follow Supreme Court and First Circuit precedent on the issue.

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 I would not overrule precedent as that would be beyond my authority and I would be bound to follow and apply controlling 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, I would follow and apply *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528 (1985), as well as any other binding precedent on that or any other point of law.

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 has indicated Congress can regulate three identified areas of interstate commerce. These areas are “the use of channels of interstate commerce”, the “instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities” and “activities that substantially affect interstate commerce.” See *United States v. Morrison*, 529 U.S. 598, 608-610 (2000); *United States v. Lopez*, 514 U.S. 549 (1995). If confirmed, I would apply and follow this and all other binding precedent.

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

Response: The President's authority to issue executive orders or take executive action must come from an Act of Congress or the Constitution itself. See *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952). The Court in *Youngstown* has established an analysis for evaluating and determining the constitutionality of executive actions or orders. See *id.* at 635-638 (Jackson, J., concurring). If confirmed, I would follow the controlling precedent on this issue.

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

Response: A right is fundamental when “‘deeply rooted in this nation's history and traditions’, and ‘implicit in the concept of ordered liberty.’” See *Washington v. Glucksberg*, 521 U.S. 702, 720-721 (1997) (internal citations omitted). If confirmed, I would follow the controlling precedent on this issue.

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

Response: Heightened scrutiny under the Equal Protection Clause is required by the Supreme Court when dealing with matters that burden a fundamental right or operate to the peculiar disadvantage of a suspect class. See, e.g. *City of Cleburne, Texas v. Cleburne Living Center*, 473 U.S. 432, 439-441 (1985). Classifications included for strict scrutiny are based on race, national origin and alienage, while gender and illegitimacy are given intermediate scrutiny. *Id.* If confirmed, I would follow all controlling precedent regarding application of scrutiny under the Equal Protection Clause.

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: My personal expectation regarding racial preferences in public higher education will play no role in any judicial decisions if I am confirmed. I would follow the holding of *Grutter v. Bollinger*, 539 U.S. 306 (2003) and *Fisher v. University of Texas at Austin*, 133 S. Ct. 2411 (2013) as well as other binding precedent on this issue.