

**Senator Ted Cruz
Questions for the Record**

**Leigh Martin May, Nominee, United States District Judge
United States District Court for the Northern District of Georgia**

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 be fair, impartial, and accurately apply the precedent of the Supreme Court and Eleventh Circuit. Although I do not identify with a particular Supreme Court Justice’s judicial philosophy, if confirmed, I will apply the Supreme Court precedent from each of these 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: In *District of Columbia v. Heller*, 554 U.S. 570, 605 (2008), the Supreme Court held that the meaning of the Constitution at the time it was ratified was to be used to interpret the Constitution. If confirmed, I will follow Supreme Court and Eleventh Circuit precedent on this issue and all other issues.

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. I would follow the precedent of the Supreme Court and the Eleventh Circuit.

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, 552 (1985), as well as other binding Supreme Court and Eleventh Circuit precedent that limit Congress’s power. Any personal opinion I may or may not have as to *Garcia* or any other Supreme Court precedent would have no role in my decision making.

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

Response: In *United States v. Lopez*, 514 U.S. 549, 558-59 (1995), and *United States v. Morrison*, 529 U.S. 598, 608-09 (2000), the Supreme Court provided a framework for evaluating Congress’s authority to enact legislation under the Commerce Clause. The Court emphasized the non-economic nature of the regulation when it invalidated the federal statutes in both cases. In *Gonzales v. Raich*, 545 U.S. 1, 37 (2005), Justice Scalia’s concurrence stated that Congress may regulate non-economic activity that has a substantial relation to interstate commerce or when regulation is a necessary part of

a more general regulation on interstate commerce. If confirmed, I will follow Supreme Court and Eleventh Circuit precedent on this and all other issues.

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

Response: In *Medellin v. Texas*, 552 U.S. 491, 524-25 (2008), the Supreme Court explained the judicially enforced limits on the President’s ability to issue executive orders and executive actions. In doing so, the Court applied Justice Jackson’s concurrence in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), which provides a tripartite scheme for evaluating the authority for executive orders and actions. If confirmed, I will follow Supreme Court and Eleventh Circuit precedent on this and all other issues.

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

Response: In *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997), the Supreme Court held that fundamental rights include “the specific freedoms protected by the Bill of Rights” and “those fundamental rights and liberties which 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.” *Id.* (internal quotations and citations omitted). If confirmed, I will follow Supreme Court and Eleventh Circuit precedent on this and all other issues.

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

Response: In *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440-41 (1985), the Supreme Court explained the circumstances in which a classification should be subjected to heightened scrutiny. These circumstances include classifications by race, alienage, national origin, gender, and illegitimacy. In addition, “[s]imilar oversight by the courts is due when state laws impinge on personal rights protected by the Constitution.” *Id.* at 440. If confirmed, I will follow Supreme Court and Eleventh Circuit precedent on this and all other issues.

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, I would follow Supreme Court and Eleventh Circuit precedent on issues regarding racial preferences in public higher education and all other issues. Any personal opinion I may or may not have as to *Grutter* and all other Supreme Court precedent would have no role in my decision making.