

**Questions for Judicial Nominees
Senator Ted Cruz**

**James Maxwell Moody, Jr.
Nominee, U.S. District Judge for the Eastern District of Arkansas**

Judicial Philosophy

Describe how you would characterize your judicial philosophy, and identify which US Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: My judicial philosophy as a state court judge for the past eleven years could best be characterized by fair and impartial treatment to all litigants that have come before me regardless of my personal views, if any. If confirmed, I will continue to follow the law and apply the law to the facts of each case before me. I do not think any single Justice's philosophy is analogous to mine but credit my judicial philosophy to my father, Judge James Moody.

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 has used "original intent" and "original public meaning" when interpreting the Constitution in certain cases. I would faithfully follow that 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: I would always follow controlling precedent.

Congressional Power

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: To the extent that *Garcia* is still controlling precedent, if confirmed, I would follow and apply controlling precedent on any issue before me.

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

Response: The United States Supreme Court has ruled that “Congress may regulate the use of the channels of interstate commerce . . . Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities . . . Congress’ commerce authority includes the power to regulate those activities having a substantial relation to interstate commerce, *i.e.*, those activities that substantially affect interstate commerce.” *U.S. v. Lopez*, 514 U.S. 549, 559 (1995). If confirmed as a district court judge and faced with a question regarding the scope of the Commerce Clause, I would follow this precedent.

Presidential Power

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

Response: The Executive Branch of government is limited in power by the authority and powers vested to it by an act of Congress or the Constitution. If those powers and authority are exceeded, the judiciary must enforce those limitations. “The President’s power, if any, to issue the order must stem from an act of Congress or from the Constitution itself.” *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

Individual Rights

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

Response: “[T]he Court has regularly observed that the Clause specially protects 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.” *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997). In addition, the Court has “required in substantive-due-process cases a ‘careful description’ of the asserted fundamental liberty interest.” *Id.* at 721 (citing *Reno v. Flores*, 507 U.S. 292, 302 (1993)).

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

Response: A classification is subject to heightened scrutiny when it involves race, gender or other suspect classification or when the classification burdens fundamental rights such as the right to vote.

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 has recently applied *Grutter v. Bollinger* to allow continued use of affirmative action in public higher education admissions but further reinforced that such a practice was subject to strict scrutiny. The Court reiterated that such an inquiry required “a careful judicial inquiry into whether a university could achieve sufficient diversity without using racial classifications,” and clarified that “[t]he reviewing court must ultimately be satisfied that no workable race-neutral alternatives would produce the educational benefits of diversity.” *Fisher v. Univ. of Texas at Austin*, 133 S. Ct. 2411, 2420 (2013). The Court also held “a university must make a showing that its plan is narrowly tailored to achieve the only interest that this Court has approved in this context: the benefits of a student body diversity that ‘encompasses a ... broa[d] array of qualifications and characteristics of which racial or ethnic origin is but a single though important element.’” *Id.* at 2421 (citing *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, 315 (1978)).

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