

Written Questions of Senator Ted Cruz
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Nominee, United States District Judge for the Central District of California
U.S. Senate Committee on the Judiciary
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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: The term "judicial philosophy" varies widely and is very personal to judges, so I cannot say which Supreme Court Justice's judicial philosophy most mirrors mine. Over the course of my seven years as a judge, my judicial philosophy has been to be prepared, to respect all litigants who enter my courtroom, to fairly and impartially judge the cases that come before me, and to faithfully apply binding precedent. It is my role to apply the law to the facts in a fair and impartial way and decide only the issues properly before the court.

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 in interpreting the meaning of words and phrases in the Constitution, a district court should look to the plain meaning of the words or phrases and to binding precedent. The original intent and original meaning, which may at times overlap, can be helpful in determining the meaning of words and phrases in the Constitution.

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 as a district court judge, it would be my obligation to follow all applicable precedent. Stare decisis is a bedrock principle of our justice system. Only the Supreme Court and Circuit Courts can re-visit their precedent, and only in limited circumstances.

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: *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528 (1985) held that the San Antonio Metropolitan Transit Authority operations were not immune from the minimum wage overtime requirements of the Fair Labor Standards Act. Regardless of whether I agreed or

disagreed with that holding or the quotation in the question, I would follow all applicable Supreme Court precedent if I were confirmed.

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

Response: I would follow all applicable precedent in analyzing such an issue if I were to be confirmed. For example, in *United States v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000), the Supreme Court has limited Congress' Commerce Clause power in connection with specific non-economic activities.

Presidential Power

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

Response: The ability of a President to issue executive orders or actions is limited to his powers delineated in the Constitution or validly granted by statute. See, e.g., *Youngstown Sheet and Tube Co. v. Sawyer*, 343 U.S. 579, 585-89 (1952). The United States Supreme Court has the authority to determine whether Presidential actions are authorized by the Constitution and federal statutes and thus permissible, or whether Presidential actions exceed such authority and are thus impermissible. If confirmed as a district court judge, I would follow all applicable Supreme Court authority.

Individual Rights

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

Response: The United States Supreme Court has articulated the analytical framework for determining whether something is a "fundamental right" for purposes of the Due Process Clause. See, e.g., *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997). If confirmed, I would follow all applicable Supreme Court authority and Circuit Court authority.

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

Response: The Supreme Court has held that certain rights, such as the right to access to criminal proceedings or the right to vote, are "fundamental," thereby subjecting laws which impinge upon them to strict scrutiny under the Equal Protection Clause. The Supreme Court has also held that laws which burden a suspect class, such as race, are also subject to strict under the Equal Protection Clause. See, e.g., *Shaw v. Hunt*, 517 U.S. 899, 901 (1996). I would research the controversy in front of me and apply all binding precedent to determine whether a classification should be subject to heightened 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: If I were confirmed as a district judge, I would apply *Grutter*, and all other controlling precedent in the area of race conscious factors in higher education regardless of my personal expectations.