

Questions for the Record
Senator Ted Cruz

Gerald Pappert,
Nominee: U.S. District Judge for the Eastern District of Pennsylvania

1. **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 know enough about the full body of work of any single Justice to be able to state whose judicial philosophy is most analogous to mine. If I am fortunate enough to be confirmed for a seat on the United States District Court, I would handle each matter to which I am assigned with an open mind and in a fair and impartial manner. I would faithfully follow Supreme Court and Third Circuit precedent with a respect for the principles of judicial restraint and an understanding of the separation of powers and the proper role of an Article III judge. I would apply the law, including all precedent, to the facts of the case and make the best decision I can.

2. **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 looked to original public meaning when interpreting a constitutional provision in *Dist. of Columbia v. Heller*, 554 U.S. 570 (2008). If confirmed, I would faithfully follow all Supreme Court precedent regarding the appropriate method to interpret the constitutional provision at issue, including looking to the Constitution’s text and original sources such as the Federalist Papers.

3. **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 I am confirmed to serve on the United States District Court, I would be bound by Supreme Court and Third Circuit precedent. There are no circumstances under which I would attempt to overrule binding precedent.

4. **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: This quote from the *Garcia* case constitutes binding precedent. If confirmed, I would faithfully follow it, as well as all other binding precedent from the Supreme Court and Third Circuit Court of Appeals, such as *New York v. United States*, 505 U.S. 144 (1992); *Printz v. United States*, 521 U.S. 898 (1997).

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

Response: Supreme Court jurisprudence on the scope of the Commerce Clause has focused on economic activity and noted that permissible categories of regulation under the Commerce Clause include the use of the channels of interstate commerce, instrumentalities of interstate commerce and activities with a substantial relation to interstate commerce. The Court has struck down statutes absent a nexus to economic activity. See *United States v. Morrison*, 529 U.S. 598 (2000) and *United States v. Lopez*, 514 U.S. 549 (1995).

At least one Justice on the Court has opined that Congress' power under the Commerce Clause may extend to regulation of non-economic activity "if that regulation is a necessary part of a more general regulation of interstate commerce." *Gonzales v. Raich*, 545 U.S. 1, 37 (2005) (Scalia, J. concurring.)

As a District Court judge, I would be bound by the rulings of the Third Circuit and Supreme Court on the scope and limitations of the Commerce Clause and I would follow that and all other precedent faithfully.

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

Response: In *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), the Supreme Court articulated the judicially enforceable limits on the President's authority to issue executive orders or actions. The President's authority must derive from an Act of Congress or the Constitution. If confirmed, I would follow Supreme Court and Third Circuit precedent when deciding any case involving executive orders or actions.

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

Response: The Supreme Court has defined a right as "fundamental" for purposes of the substantive due process doctrine when it is "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) (citations and internal quotation marks omitted.) If confirmed, I would follow all Supreme Court and Third Circuit precedent when deciding whether a right is "fundamental" for substantive due process purposes.

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

Response: The Supreme Court has defined two levels of heightened scrutiny or scrutiny above a "rational basis" review. Under intermediate scrutiny, applied to classifications such as gender that often bear "no relation to ability to perform or contribute to society", the state action must serve important governmental objectives and must be substantially related to the achievement of those objectives. To survive a strict scrutiny analysis,

applied to classifications such as race, alienage and national origin, the state action must be narrowly tailored to a compelling governmental interest. *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440-441 (1985). If confirmed, I would faithfully apply Supreme Court and Third Circuit precedent to determine the level of scrutiny applicable to any matter that comes before me.

9. **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: In her majority opinion in *Grutter*, Justice O’Connor anticipated that the use of racial preferences would no longer be necessary in public higher education 25 years after that decision. I do not have any personal expectations in this regard. If confirmed, I would follow the Court’s holding in *Grutter*, as well as any additional guidance and precedent such as *Fisher v. University of Texas at Austin*, 133 S. Ct. 2411 (2013).