

Senator Ted Cruz
Questions for the Record

Linda Vivienne Parker
Nominee, U.S. District Judge for the Eastern District of Michigan

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 as a state court judge for nearly five years could best be characterized by faithfully upholding the rule of law by the application of controlling appellate precedent to the facts of the cases before me. If confirmed, I will continue to adhere to this most sacred principle and decide each case with impartiality, issue thoughtful decisions promptly and treat all parties that appear before me with respect. I have not studied Supreme Court history with an eye toward the judicial philosophies of the Justices, so I cannot analogize my beliefs to those of any one Justice.

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: If confirmed as a district court judge, there would be no circumstances under which I would overrule precedent. I would faithfully follow applicable 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, to the extent that *Garcia* is controlling precedent, I would follow it and all other controlling precedent in any case 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 Supreme Court, in *United States v. Lopez*, 514 U.S. 549, 558-559 (1995), identified three general categories of activity that Congress may regulate under its Commerce Clause power: (1) the use of channels of interstate commerce, (2) instrumentalities of interstate commerce and persons or things in interstate commerce, and (3) activities that substantially

affect interstate commerce. In *United States v. Lopez, supra*, and *United States v. Morrison*, 529 U.S. 598 (2000) the Supreme Court has also articulated limitations to the reach of the Commerce Clause to certain non-economic activities. If confirmed as a district court judge and presented with a challenge to the constitutionality of a statute on the grounds that it impermissibly extended to non-economic activity, I would apply controlling precedent in making my ruling.

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

Response: The power of the President to issue executive orders or executive actions "must stem either from an act of Congress or from the Constitution itself." *Youngstown Sheet and Tube v. Sawyer*, 343 U.S. 579, 586 (1952).

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

Response: The Supreme Court has stated that the "Due Process 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, 720 (1997) (citations omitted). If confirmed, I would apply the precedent of the Supreme Court and the Sixth Circuit Court of Appeals.

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

Response: The Supreme Court has ruled that "equal protection analysis requires strict scrutiny of a legislative classification when the classification impermissibly interferes with the exercise of a fundamental right or operates to the peculiar disadvantage of a suspect class." *Mass. Bd. of Retirement v. Murgia*, 427 U.S. 307, 312 (1976). See also *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440 (1985) (noting that strict scrutiny applies to classifications based on "race, alienage or national origin" or when "laws impinge on personal rights protected by the Constitution"; otherwise "heightened" review applies to classifications based on gender and illegitimacy).

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: For nearly five years as a state court judge, any personal expectations or beliefs I might have with respect to the issues before me have been irrelevant to my judicial decisions. If I were confirmed as a federal district court judge, that will continue to be true. I will apply the controlling precedents of the Supreme Court and Sixth Circuit Court of Appeals in all areas of the law, including *Grutter* and *Fisher v. University of Texas*, 133 S. Ct. 2411 (2013).