

Questions for the Record

Senator Ted Cruz

Pamela Pepper,

Nominee, U.S. District Court for the Eastern District of Wisconsin

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: A judge's obligation is to fairly decide disputes based on the Constitution, applicable statutes, rules, regulations and precedent, setting aside personal views and opinions. My judicial philosophy seeks to fulfill that obligation by patiently and respectfully hearing the arguments of all parties, and then rendering a timely and clearly-reasoned decision. I am not sufficiently familiar with the individual judicial philosophies of the members of the Warren, Burger or Rehnquist Courts to identify a particular justice with a philosophy similar to my own.

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: Yes. The Supreme Court has utilized originalism—particularly, original public meaning—to interpret the Constitution in cases such as *District of Columbia v. Heller*, 554 U.S. 570 (2008). That decision and others constitute binding 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: Lower court judges do not have the authority to overrule binding precedent. I have not done so as a bankruptcy judge; I could not and would not do so as a district court judge, if confirmed.

Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in 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: The *Garcia* decision remains binding precedent. As a lower court judge, I would apply this, and all other binding precedent, regardless of my personal views or opinions.

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

Response: While the Supreme Court has found unconstitutional federal statutes regulating non-economic activity as violating the Commerce Clause, see, e.g., *United States v. Lopez*, 514 U.S. 549 (1995), the Court also has held that Congress may regulate "purely local" activities, "though [they] may not be regarded as commerce," which "have a substantial effect on interstate

commerce." *Gonzales v. Raich*, 545 U.S. 1, 17 (2005) (internal citations omitted). If confirmed to serve on the district court, I would follow all binding Supreme Court and Seventh Circuit precedent regarding Congress' authority under the Commerce Clause.

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

Response: The judicial authority in question first must have jurisdiction over a controversy ripe for determination. If such a controversy exists, the Supreme Court has held that the judiciary has the authority to review whether the President's authority to issue such orders or take such actions comes either from the Constitution or from an act of Congress. *Medellin v. Texas*, 552 U.S. 491, 524 (2008) (quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 529, 585 (1952)).

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

Response: A fundamental right, under the substantive due process doctrine, is one which 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, 721 (1997) (internal citations omitted). I will follow this precedent and all precedent if confirmed.

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

Response: The Supreme Court has held that certain classifications—race, religion, national origin, gender—as well as classifications which burden a fundamental right, are subject to heightened levels of scrutiny under the Equal Protection Clause. See *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 472 U.S. 432, 440 (1995). If confirmed, I will follow Supreme Court and Seventh Circuit precedent regarding relevant levels of 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 confirmed, I will follow the binding precedent in *Grutter* and other cases ruling on the constitutionality of admissions policies based on particular classifications, and will not rule based on predictions or expectations.