

Questions for the Record
Senator Ted Cruz

James D. Peterson
Nominee, U.S. District Judge for the Western 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: I am not sufficiently familiar with the philosophies of the individual justices to identify any one of them as similar to my own. Moreover, I do not have any philosophy that would predict my approach to deciding a particular case, except that I would decide each case impartially on the basis of the admissible evidence and the law. As a district court judge, my judicial philosophy would focus on efficient case management. If confirmed, I would set reasonably fast case schedules with firm dates, give full consideration to dispositive motions, and decide all motions promptly.

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: Pursuant to *District of Columbia v. Heller*, 554 U.S. 570, 605 (2008), the contemporaneous public understanding of a legal text is a critical tool of constitutional interpretation. If confirmed, I will follow this and all other Supreme Court precedent concerning constitutional interpretation.

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: None. As a district judge, it would not be within my authority to overrule precedent, and I would not attempt to do so.

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: The statement from *Garcia* reflects the Supreme Court's determination that state interests are protected in Congress through the political process, whereas its own interpretation of the Commerce Clause in *National League of Cities v. Usery*, 426 U.S. 833 (1976), had proved unworkable and produced inconsistent results. If confirmed, I would follow *Garcia* and subsequent decisions in which the Supreme Court identified constitutional limitations on congressional power. See, e.g., *United States v. Lopez*, 514 U.S. 549 (1995); *United States v. Morrison*, 529 U.S. 598 (2000).

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

Response: Congress may regulate non-economic activity that has a substantial relation to interstate commerce, or when a "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). If confirmed, I would faithfully follow Supreme Court and Seventh Circuit precedent in deciding issues concerning the Commerce Clause.

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

Response: When executive action is challenged in a judicial proceeding, the reviewing court must determine first whether jurisdictional and standing requirements are satisfied. If so, and if necessary to resolve the question presented, the court may be called upon determine whether the President's order or action is authorized by the Constitution or an act of Congress. *See Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952). If confirmed, I would faithfully follow Supreme Court and Seventh Circuit precedent in deciding any challenge to executive action.

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

Response: A right is fundamental when it is expressly stated in the Constitution or 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.'" *See Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997). If confirmed, I would faithfully follow Supreme Court and Seventh Circuit precedent in deciding issues concerning fundamental rights.

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

Response: The Supreme Court requires strict scrutiny of governmental classifications that burden a fundamental right, or those based on race, religion, or national origin. Intermediate scrutiny is required of governmental classifications based on gender or illegitimacy. *See, e.g., Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 439-41 (1985). If confirmed, I would faithfully follow Supreme Court and Seventh Circuit precedent in deciding Equal Protection Clause issues.

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: I do not have personal expectations about the status of educational diversity in 15 years, and my personal expectations would play no role in judicial decisions. The statement from *Grutter* reflects Supreme Court precedent that racial preferences should be truly rare and used only in cases of compelling need. If confirmed, I would faithfully follow Supreme Court and Seventh Circuit precedent in deciding any case involving racial preferences.