

**Responses of Jill A. Pryor, Nominee,
United States Circuit Judge for the Eleventh Circuit, to
Questions for the Record
Senator Ted Cruz**

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 believe that an appellate judge must respect the limited role of judges and appellate judges in particular, applying the law to the facts in the record of each case with faithful adherence to precedent. An appellate judge must also apply the appropriate standard of review, affording the required degree of deference to the district courts' decisions. A circuit judge should attempt to give clear, cogent guidance to the district courts and the parties without deciding or opining upon issues that are not necessary to the resolution of the case or controversy before the court. The judge must administer justice fairly and impartially, setting aside any personal views, motivation, or feelings the judge might have, and avoid any activity that might create even the appearance of impropriety. The judge must at all times treat litigants, counsel, colleagues, and court staff with courtesy, respect, and dignity. The judge must also work very diligently to decide cases in a timely manner, recognizing that justice delayed can sometimes amount to justice denied. While I do not identify any single Justice's judicial philosophy as analogous with mine, I believe that all excellent jurists share these same values.

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: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court construed the Second Amendment by looking to the original public meaning of its terms. In construing the Suspension Clause and the writ of habeas corpus in *Boumediene v. Bush*, 553 U.S. 723 (2008), the Court looked to the intent of the framers of the Constitution. If confirmed, I will faithfully follow these and all other applicable Supreme Court precedents regarding the proper methodology for interpreting the particular constitutional provision at issue.

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: An Eleventh Circuit panel's decision may be overruled only by the Eleventh Circuit sitting *en banc* or by the United States Supreme Court. Federal Rule of Appellate Procedure 35 provides that rehearing *en banc* will be ordered only where it is "necessary to secure or maintain uniformity of the court's decisions" or the case "involves a question of exceptional importance." Further, even if *en banc* review is granted, the decision to overrule precedent must always be approached with caution. If confirmed, I will follow Supreme Court and Eleventh Circuit precedent unless and until it is overruled.

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 as a judge on the Eleventh Circuit, I will be bound by all Supreme Court precedents, including the *Garcia* case, as well as more recent precedents such as *New York v. United States*, 505 U.S. 144 (1992), and *Printz v. United States*, 521 U.S. 898 (1997), both of which held that the federal laws at issue were unconstitutional because they violated state sovereignty.

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 has emphasized the non-economic nature of the regulated activity in striking down federal laws as unconstitutional under the Commerce Clause. See *United States v. Morrison*, 529 U.S. 598 (2000); *United States v. Lopez*, 514 U.S. 549 (1995). The Supreme Court has not, however, ruled that non-economic activity could never be regulated under the Commerce Clause. See *Gonzales v. Raich*, 545 U.S. 1, 37 (2005) (Scalia, J., concurring) (concluding that the Commerce Clause power, in conjunction with the Necessary and Proper Clause, permits Congress to regulate “even non-economic local activity if that regulation is a necessary part of a more general regulation of interstate commerce.”). If confirmed, I will follow all Supreme Court and Eleventh Circuit precedent.

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

Response: The Supreme Court addressed the judicially enforceable limits on the President’s ability to issue executive orders in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), in which the Court held unconstitutional the President’s seizure of the steel mills during the Korean War. The President’s authority to act must come from an act of Congress or the Constitution. If confirmed, I will follow Supreme Court and Eleventh Circuit precedent when considering any case involving executive orders or executive actions.

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

Response: The Supreme Court has held that certain rights are fundamental and entitled to constitutional protection where the claimed right is “deeply rooted in this nation’s history and tradition . . . and implicit in the concept of ordered liberty.” *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997) (internal citations and quotations omitted). The right must also be “careful[ly] descri[bed].” *Id.* (citations omitted). If confirmed as a judge on the Eleventh Circuit, I will apply Supreme Court precedent such as *Glucksberg*, as well as any applicable Eleventh Circuit precedent, when considering whether a right is “fundamental” for purposes of substantive due process.

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

Response: Supreme Court precedent holds that strict scrutiny must be applied to classifications that are “so seldom relevant to the achievement of any legitimate state interest,” such as race and national origin. *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440 (1985). Under strict scrutiny, the state action must be narrowly tailored to a compelling governmental interest. Intermediate scrutiny is applied to classifications such as gender, which “frequently bear[] no relation to ability to perform or contribute to society.” *Id.* at 440-41. To survive intermediate scrutiny, the state action must serve important governmental objectives and must be substantially related to the achievement of those objectives. If confirmed, I will faithfully apply this precedent.

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 am not in a position to know whether the majority’s prediction in the *Grutter* case will prove to be accurate; however, if confirmed, I will abide by the Supreme Court’s holding in that case and in *Fisher v. University of Texas at Austin*, ___ U.S. ___, 133 S. Ct. 2411 (2013), that the use of racial classifications in public university admissions is constitutional only if it can survive strict scrutiny.