

Questions for the Record
Senator Ted Cruz

Pamela L. Reeves
Nominee, U.S. District Judge for the Eastern District of Tennessee

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: Having not yet had the opportunity to serve as a judge, it is difficult for me to say with certainty what my judicial philosophy might be. Perhaps it would be more helpful for me to say that the qualities I admire most in judges include patience, respect for the litigants who appear in their court, and a willingness to keep an open mind until all parties have had an opportunity to fully and fairly present their cases. While I am not a student of judicial philosophy, I have always admired Justice Sandra Day O’Connor, in part because of the grace and humility with which she dealt with the pressure of being the first female on the United States Supreme Court. She also possessed two additional traits that I would hope to emulate if I am fortunate to be confirmed. First, she generally sought to keep her decisions narrow. Second, she was perceived as a justice who kept an open mind and made decisions based on the specifics of the case. I would seek to incorporate both of these traits into my judicial philosophy and practice, if confirmed.

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 United States Supreme Court has employed originalism in interpreting the U.S. Constitution. For example, the Supreme Court looked to the original public meaning of the U.S. Constitution in its decision in *District of Columbia v. Heller*, 554 U.S. 570 (2008). If confirmed as a U.S. District Judge, I will apply applicable U.S. Supreme Court and Sixth Circuit precedent on issues involving the interpretation of the U.S. Constitution in the same manner that I would apply binding precedent to all other issues.

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 U.S. District Judge, I will not have authority to overrule precedent from the Sixth Circuit Court of Appeals or from the U.S. Supreme Court.

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 Supreme Court's decision in *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528 (1985) remains binding precedent. If I am confirmed, I will apply this and all binding precedent without regard to whether I agree or disagree with the precedent.

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

Response: The U.S. Supreme Court has articulated three categories of activity that Congress may regulate under the Commerce Clause of the U.S. Constitution: (1) the use of the channels of interstate commerce; (2) the instrumentalities of interstate commerce; and (3) activities having a substantial relation to interstate commerce. See *United States v. Lopez*, 514 U.S. 549 (1995), *United States v. Morrison*, 529 U.S. 598 (2000), and *Gonzales v. Reich*, 545 U.S. 1 (2005). If confirmed, I would adhere to the precedents set forth in those cases and any other binding precedent on the issue of Congress' Commerce Clause power from the U.S. Supreme Court or the Sixth Circuit.

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

Response: In *Medellin v. Texas*, 552 U.S. 491, 524 (2008), the U.S. Supreme Court held that "[t]he President's authority to act, as with the exercise of any governmental power, 'must stem either from an act of Congress or from the Constitution itself.'" (quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952)). Applying this precedent, and assuming the question is presented in a justiciable case or controversy, the judiciary may invalidate executive orders or actions when the act or order in question violates the Constitution or federal law.

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

Response: It has long been established that a fundamental right, for purposes of the substantive due process doctrine, is a right that 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 [it] were sacrificed." *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (citations and quotation marks omitted). If confirmed as a U.S. District Judge, I would apply this and other precedent established by the U.S. Supreme Court and the Sixth Circuit Court of Appeals in analyzing fundamental rights.

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

Response: The U.S. Supreme Court has held that classifications based on race, alienage, national origin, and gender are subject to heightened scrutiny under the Equal Protection Clause. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985). If confirmed as a U.S. District Judge, I would apply Supreme Court and Sixth Circuit precedent in determining whether a particular classification should be subjected to heightened scrutiny.

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: *Grutter v. Bollinger* is binding Supreme Court precedent. If I am fortunate to be confirmed as a U.S. District Judge, I will apply Supreme Court and Sixth Circuit precedent without regard to my personal expectations.