

Questions for the Record
Senator Ted Cruz

Eleanor Ross,
Nominee: U.S. District Judge for the Northern District of Georgia

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: As a state judge, my judicial philosophy has been one which embodies impartiality and consideration for all litigants appearing before me, attentiveness to the issues presented, respect for the legal process by rendering prompt and clear rulings, and faithful application of the law to the facts. Although I am familiar with various opinions from the Warren, Burger and Rehnquist Courts, I have not studied the judicial philosophy of any U.S. Supreme Court Justice to analogize their philosophies to mine.

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, in *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court employed the original public meaning model of interpretation when analyzing the Second Amendment. If confirmed I would follow *Heller*, *supra*, as well as other applicable 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, there are no circumstances under which I would overrule 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, I would follow the Supreme Court’s decision in *Garcia*, *supra*, as well as other relevant Supreme Court precedent concerning the constitutional limits on Congress’ authority such as *Printz v. United States*, 521 U.S. 898 (1997) and *New York v. United States*, 505 U.S. 144 (1992).

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 determined there are limitations on Congress’ regulation of certain non-economic activity pursuant to the Commerce Clause. *See United States v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000). If confirmed, I would

consider the type of activity being regulated and apply this precedent as well as other applicable precedent to the facts before me.

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

Response: The President's ability to issue executive orders or executive actions "must stem either from an act of Congress or from the Constitution itself." *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952); *Medellin v. Texas*, 552 U.S. 491, 524-525 (2008). If confirmed, I would follow the precedent set forth by these cases as well as other applicable precedent.

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

Response: For purposes of the substantive due process doctrine, a right is fundamental if it is "...objectively, 'deeply rooted in this Nation's history and tradition and so rooted in the traditions 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, 720-721 (1997) (internal citations omitted). If confirmed, I would follow this standard and all applicable precedent in deciding issues relating to the determination of a fundamental right.

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

Response: The United States Supreme Court has held that certain classifications such as race, gender, and national origin are subjected to heightened scrutiny under the Equal Protection Clause because such classifications are rarely relevant to the furtherance of a legitimate state interest. See *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440 (1985). If confirmed, I would follow and apply precedent of the Supreme Court and the Eleventh Circuit Court of Appeals in identifying any classification requiring heightened 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 I am confirmed, I will follow all applicable precedent relating to the use of racial preferences in public higher education without regard to any personal expectations or beliefs that I may have.