

Written Questions of Senator Ted Cruz
Sheri Chappell
Nominee, United States District Judge for the Middle District of Florida
U.S. Senate Committee on the Judiciary
January 25, 2013

Judicial Philosophy

Describe how you would characterize your judicial philosophy, and identify which US Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: Judges must respect the rule of law and understand their limited role in our constitutional system. My judicial philosophy is to decide only those cases or controversies properly before me and base my decisions on the binding precedent of the United States Supreme Court and the Eleventh Circuit Court of Appeals. My duties as a United States Magistrate Judge are different from that of a United States Supreme Court Justice, so I cannot say my judicial philosophy is analogous to any one Justice. If confirmed as a United States District Court Judge, it would be my oath and duty to decide all cases fairly and impartially, applying the law without regard to personal views or opinions. I have followed that philosophy for the past 12 years while serving as a state court judge and as a United States Magistrate Judge.

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: If faced with a case involving interpretation of a constitutional provision, I would first look at the express language of the provision to consider its plain and ordinary meaning considering the historical context in which it was enacted. If the provision was unambiguous, I would apply the plain and ordinary meaning. If the provision was unclear, I would research cases from the United States Supreme Court and the Eleventh Circuit Court of Appeals to provide guidance. If warranted, I would further research persuasive appellate and trial court decisions from other jurisdictions.

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: As a judge, I have adhered to the doctrine of *stare decisis* which helps to provide consistency under our rule of law. As a prospective United States District Court Judge, I am committed to honoring the doctrine of *stare decisis* and strictly following the controlling precedent established by the United States Supreme Court and the Eleventh Circuit Court of Appeals.

Congressional Power

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 *Garcia* case is binding precedent and if I am confirmed as a United States District Court Judge, I would apply that precedent and the binding precedent of all cases of the United States Supreme Court and the Eleventh Circuit Court of Appeals fairly and impartially, without regard to 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: The Supreme Court has identified "three broad categories of activity" that Congress may regulate under its Commerce Clause power. *United States v. Lopez*, 514 U.S. 549, 558 (1995). "First, Congress may regulate the use of the channels of interstate commerce. Second, Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities. Finally, Congress' commerce authority includes the power to regulate those activities having a substantial relation to interstate commerce, *i.e.*, those activities that substantially affect interstate commerce." *Id.* at 558-59; *United States v. Morrison*, 529 U.S. 598, 609 (2000).

Presidential Power

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). If confirmed as a United States District Court Judge and faced with a case involving the limits on the President's ability to issue executive orders, I would apply that precedent.

Individual Rights

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

Response: The Supreme Court has identified that rights are "fundamental" for purposes of the substantive due process doctrine when "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, 720-21 (1997) (internal quotation marks and citations omitted). If confirmed as a United States District Court Judge, I would apply that precedent.

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

Response: The United States Supreme Court has explained that a classification is subject to the heightened scrutiny analysis under the Equal Protection Clause when it “classifies by race, alienage, or national origin,” or “based on gender.” *City of Cleburne, Texas v. Cleburne Living Center*, 473 U.S. 432, 440 (1985). The Court has further explained that heightened scrutiny is also appropriate for classifications that “impinge on personal rights protected by the Constitution.” *Id.*

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 as a United States District Court Judge, I will apply *Grutter* and any other binding precedent in this area of the law regardless of any views or expectations I might have. I will diligently follow the precedent set forth by the United States Supreme Court and the Eleventh Circuit Court of Appeals.

Written Questions of Senator Jeff Flake
Sheri Chappell
Nominee, United States District Judge for the Middle District of Florida
U.S. Senate Committee on the Judiciary
January 25, 2013

1. What qualities do you believe all good judges possess?

Response: A good judge must be fair and impartial in applying the law without bias, sympathy, or prejudice. Further, a judge must be patient, humble, and an attentive listener. A judge must treat all attorneys, parties, and members of the public with the utmost respect, thereby setting the standard for courtroom decorum for others to emulate.

a. How does your record reflect these qualities?

Response: I believe my reputation in the community as a judge over the past 12 years reflects that I have exhibited the ability to be fair and impartial in applying the law without bias, sympathy, or prejudice. I believe it also reveals that my judicial temperament is patient, humble, and that I am an attentive listener who treats attorneys, parties, and members of the public with the utmost respect.

2. Do you believe judges should look to the original meaning of the words and phrases in the Constitution when applying it to current cases?

Response: If faced with a case involving a Constitutional provision, I would first look at the express language of the provision to consider its plain and ordinary meaning, considering the historical context in which it was enacted. If the provision was unambiguous, I would apply the plain and ordinary meaning. If the provision was unclear, I would follow cases from the United States Supreme Court and the Eleventh Circuit Court of Appeals to provide guidance.

a. If so, how do you define original meaning originalism?

Response: I understand original meaning “originalism” to be a principle of interpretation which applies the original meaning of the text of the Constitution at the time of its ratification.

3. In Federalist Paper 51, James Madison wrote: “In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.” In what ways do you believe our Constitution places limits on the government?

Response: The Constitution establishes and expressly sets forth the powers granted to each of the three branches of the Federal government and their limitations. The Constitution also places limits on the government through a system of checks and balances. The Bill of Rights further limits the government.

a. How does the Judicial Branch contribute to this system of checks and balances?

Response: Article III of the Constitution establishes the Judicial Branch and sets forth the jurisdiction of the courts. It specifically empowers the Federal courts to hear cases and controversies in several specific categories, including those “arising under th[e] Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their authority.” U.S. Const. art. III, § 2, cl. 1.

4. Since at least the 1930s, the Supreme Court has expansively interpreted Congress’ power under the Commerce Clause. Recently, however, in the cases of *United States v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000), the Supreme Court has imposed some limits on that power.

a. Some have said the Court’s decisions in *Lopez* and *Morrison* are inconsistent with the Supreme Court’s earlier Commerce Clause decisions. Do you agree? Why or why not?

Response: The United States Supreme Court in *Lopez* and *Morrison* did not overrule prior Supreme Court Commerce Clause decisions. I am bound to follow the binding Commerce Clause decisions of the United States Supreme Court and the Eleventh Circuit Court of Appeals and would apply that law to the facts of the case before me.

b. In your opinion, what are the limits to the actions the federal government may take pursuant to the Commerce Clause?

Response: The United States Supreme Court has identified “three broad categories of activity” that Congress may regulate under its Commerce Clause power. *United States v. Lopez*, 514 U.S. 549, 558 (1995). “First, Congress may regulate the use of the channels of interstate commerce. Second, Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities. Finally, Congress’ commerce authority includes the power to regulate those activities having a substantial relation to interstate commerce, *i.e.*, those activities that substantially affect interstate commerce.” *Id.* at 558-59; *United States v. Morrison*, 529 U.S. 598, 609 (2000). If confirmed as a United States District Court Judge, I would follow the precedent as set forth above and apply that law to the facts of the case before me.

c. Is any transaction involving the exchange of money subject to Congress’s Commerce Clause power?

Response: No, the United States Supreme Court has never held that every exchange of money is subject to Congress’ Commerce Clause power.

5. What powers do you believe the 10th Amendment guarantees to the state? Please be specific.

Response: The 10th Amendment states: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” U.S. Const. amend. X. Examples of powers guaranteed to the States by virtue of the 10th Amendment are the power to tax and police powers.