

Questions for the Record
Senator Ted Cruz

Gregory N. Stivers,
Nominee, U.S. District Judge for the Western District of Kentucky

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.

If I am confirmed, my judicial philosophy will be to work hard to decide cases before me fairly, impartially, and expeditiously, in accordance with the plain language of applicable statutes and precedents established by the U.S. Supreme Court and the Sixth Circuit Court of Appeals. I am not familiar enough with the respective judicial philosophies of the Supreme Court Justices on the Warren, Burger, or Rehnquist Courts to make a comparison 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)?

The U.S. Supreme Court has relied on the text and original meaning of Constitutional provisions in many cases. For instance, in *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court relied upon the Second Amendment’s original public meaning. If confirmed, I would interpret the Constitution in accordance with established precedent, including *Heller*.

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?

If confirmed as a district court judge, I would not overrule any precedent of the U.S. Supreme Court or the Sixth Circuit Court of Appeals.

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).

If confirmed as a district court judge, I would follow *Garcia* without regard to any personal opinion I may have regarding the holding of the case.

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

In ruling on issues related to the extent of Congress’ power under the Commerce Clause, I would follow the precedent of the U.S. Supreme Court and the Sixth Circuit Court of Appeals in determining whether that power extends to non-economic activity. See, e.g., *United States v. Lopez*, 514 U.S. 549 (1995); *United States v. Morrison*, 529 U.S. 598 (2000).

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

As the U.S. Supreme Court has recognized, "[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.'" *Medellín v. Texas*, 552 U.S. 491, 524 (2008) (internal citations omitted). The Court has recognized the proper analysis for reviewing executive orders or actions is set forth in Justice Jackson's concurring opinion in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 634-55 (1952). If confirmed as a district court judge, I would follow the precedent of the U.S. Supreme Court and the Sixth Circuit Court of Appeals in reviewing executive orders or actions.

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

The U.S. Supreme Court has defined fundamental rights as being "those fundamental rights and liberties which are, 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 citations omitted). If confirmed as a district court judge, I would follow this and other applicable precedent of the U.S. Supreme Court and Sixth Circuit Court of Appeals for the purpose of substantive due process analysis.

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

The U.S. Supreme Court has recognized two forms of heightened scrutiny under the Equal Protection Clause: strict scrutiny and intermediate scrutiny. The Court has applied strict scrutiny to any law creating classifications based upon "race, alienage, or national origin," or "when state laws impinge upon personal rights protected by the Constitution." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985). The Court has applied intermediate scrutiny to laws creating classifications based upon gender or illegitimacy. *See id.* at 440-41. If confirmed as a district court judge, I would follow the applicable precedent of the U.S. Supreme Court and the Sixth Circuit Court of Appeals in analyzing classifications 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).

In ruling on issues related to the use of racial preferences in public higher education I would follow the established precedent of the U.S. Supreme Court and the Sixth Circuit Court of Appeals, regardless of any personal expectations I may have.