

**Responses of Victor Allen Bolden
Nominee to the United States District Court for the District of Connecticut
To The Written Questions of 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: If confirmed, my judicial philosophy would be to be fair and impartial and to decide matters based on the relevant facts and applicable law, consistent with binding Supreme Court and Second Circuit precedent. While I have read numerous Supreme Court opinions from the Warren, Burger and Rehnquist Courts, I have not undertaken the study necessary to identify a specific Supreme Court justice's philosophy most analogous to my own.

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 confirmed, I would follow binding Supreme Court and Second Circuit precedent on how to interpret the United States Constitution. Binding Supreme Court precedent recognizes originalism as a means of interpreting constitutional provisions. *See District of Columbia v. Heller*, 554 U.S. 570 (2008) (reviewing the original public meaning of the Second Amendment). I would faithfully apply binding Supreme Court precedent on this area of the law.

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: District judges must follow precedent of the Supreme Court and the United States Court of Appeals for the Second Circuit. If confirmed, I would not overrule the precedent of these higher authorities.

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: This statement is an excerpt from an opinion by the Supreme Court and reflects binding precedent. If confirmed, I would follow that precedent and any other binding case law, such as *Printz v. United States*, 521 U.S. 899 (1997) and *New York v. United States*, 505 U.S. 14 (1992), to cases involving state sovereign interests and judicially enforceable limitations on federal power.

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 recognized that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, cannot be exercised in the absence of a

nexus to economic activity. See *United States v. Morrison*, 529 U.S. 598, 613 (2000) (striking down a federal civil remedy for victims of gender-motivated violence because “[g]ender-motivated crimes of violence are not, in any sense of the phrase, economic activity.”); *United States v. Lopez*, 514 U.S. 549, 567 (1995) (striking down legislation regulating firearms in school zones because this is not “an economic activity that might, through repetition elsewhere, substantially affect any sort of interstate commerce.”). In *Gonzales v. Raich*, 545 U.S. 1 (2005), the Supreme Court also held that Congress could regulate drug activity even at the local level because “failure to regulate that class of activity would undercut” other broader interests affecting economic activity. See 545 U.S. at 18, 26; *id.* at 37 (Justice Scalia, concurring) (“Congress may regulate even noneconomic local activity if that regulation is a necessary part of a more general regulation of interstate commerce.”). If confirmed, I would faithfully follow Supreme Court and Second Circuit precedent in this area of the law.

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

Response: The Supreme Court has recognized that presidential authority to issue executive orders or 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). Justice Jackson’s concurrence in that case established the tripartite scheme for evaluating the legitimacy of the executive action at issue. See *Medellin v. Texas*, 552 U.S. 491, 637-638 (2008). If confirmed, I would faithfully apply Supreme Court precedent in this area of the law.

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

Response: The Supreme Court has recognized that there are “fundamental rights and liberties which are objectively, deeply rooted in this Nation’s history and tradition,” *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (internal citations and quotations omitted), and which are “implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed[.]” *Id.* If confirmed, I would faithfully apply Supreme Court precedent in this area of the law.

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

Response: The Supreme Court has recognized two levels of heightened scrutiny above rational basis review under the Equal Protection Clause: strict scrutiny and intermediate scrutiny. Strict scrutiny is applied to classifications, such as race, which are “so seldom relevant to the achievement of any legitimate state purpose,” *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440 (1985). Intermediate scrutiny is applied to classifications including gender, which “frequently bear[] no relation to ability to perform or contribute to society.” *Id.* at 440-41. If confirmed, I would faithfully apply Supreme Court precedent in this area of the law.

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, I would faithfully apply Supreme Court precedent in this area of the law, such as *Grutter v. Bollinger*, 539 U.S. 306 (2003) and *Fisher v. University of Texas at Austin*, 133 S. Ct. 2411 (2013). Any personal expectations would have no bearing on my judicial decision-making.