

**Responses of Vernon S. Broderick
Nominee to be United States District Judge for the Southern District of New York
To the Written Questions of Senator Ted Cruz**

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: Were I to be confirmed as a district court judge, my judicial philosophy would be characterized by a commitment to an impartial adherence to the rule of law and to treating all litigants fairly and with respect. This means that I would exercise judicial restraint in all matters by deciding only the issues in controversy before me and applying prevailing applicable precedent. I do not consider myself to be a student of the judicial philosophies of Supreme Court Justices and therefore do not have a view which Justice's judicial philosophy would be most analogous with my philosophy.

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: District court judges are constrained to follow prevailing legal precedent on all matters in which the Supreme Court or their particular court of appeals has spoken. Therefore, if I am confirmed as a district court judge I would apply the United States Supreme Court and Second Circuit Court of Appeals decisions to interpret the Constitution. One example of a binding decision where the Supreme Court has interpreted the Constitution using originalism is *District of Columbia v. Heller*, 554 U.S. 570 (2008).

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 district court judge, I would be required to apply precedential authority issued by the Supreme Court and the Second Circuit Court of Appeals. Therefore, I would not overrule precedent as a district court judge.

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: *Garcia v. San Antonio Metro Transit Authority* is binding precedent. Therefore, if confirmed as a district court judge, I would apply the precedent articulated by the Supreme Court in *Garcia*.

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

Response: According to *United States v. Lopez*, 514 U.S. 549, 558–59 (1995), the federal government first “may regulate the use of the channels of interstate commerce,” second “may regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce” even if threatened only by “intrastate activities,” and third may “regulate those activities having a substantial relation to interstate commerce, i.e., . . . that substantially affect interstate commerce.” If I am

confirmed as a district court judge and presented with a case involving the scope of Congress's Commerce Clause power, I would follow the binding precedent of the United States Supreme Court, including *United States v. Lopez*, 514 U.S. 549 (1995), *United States v. Morrison*, 529 U.S. 598 (2000), *Gonzales v. Raich*, 545 U.S. 1, 37 (2005), as well as any other relevant precedent.

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

Response: The President's authority to issue executive orders and take executive actions is limited by the Constitution and federal statutes. If the President issues an executive order or acts in a way that violates the Constitution or a statute properly enacted by Congress and a challenge to that action is properly brought before a court, then a federal judge can invalidate the action as exceeding the President's authority. See *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

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

Response: The Supreme Court discussed the "established method of substantive-due process analysis" in *Washington v. Glucksberg*, observing that "the Due Process Clause specifically protects 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) (citations omitted). For a district court judge sitting in the Southern District of New York, a right is fundamental when it has previously been so characterized by either the United States Supreme Court or the Second Circuit Court of Appeals. If confirmed, I would apply the relevant precedent by these two courts.

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

Response: According to Supreme Court precedent, a classification should be subjected to heightened scrutiny under the Equal Protection Clause when it differentiates based on race, alienage, national origin, or gender. The Court has also explained that heightened scrutiny should be applied when a classification burdens a right the Court has identified as "fundamental," such as the right to vote.

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 abide by *Grutter* and all other Supreme Court precedents regardless of my personal views and expectations.