

**Response of Jeffrey A. Meyer
Nominee to be United States District Judge 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 I were confirmed to serve as a federal district judge, I would strive to treat all parties with respect, to be fair and impartial, to promptly decide cases that come before me, and to follow the law as written and as interpreted by higher courts including the United States Supreme Court and the United States Court of Appeals for the Second Circuit. I do not believe this judicial philosophy is most analogous to any one particular Justice of the United States Supreme Court.

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: I believe that the original intent and meaning of the words of the Constitution must be considered, *see, e.g., District of Columbia v. Heller*, 554 U.S. 570, 576-77 (2008), consistent with authoritative precedent of a higher court that has interpreted any particular provision of the Constitution.

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 I were to be confirmed to serve as a federal district judge, I would follow precedent of the United States Supreme Court and the United States Court of Appeals for the Second Circuit. If presented with an issue of state law, I would also follow the precedent of relevant state courts as required under *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938). As a district court judge, I would not have authority to overrule the precedent of other courts.

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 to serve as a federal district judge, I would be bound by and follow the Supreme Court's decision in *Garcia v. San Antonio Metro Transit Authority* and by other decisions of the United States Supreme Court and the United States Court of Appeals for the Second Circuit concerning the balance of federal and state sovereign powers under the Constitution. *See, e.g., Printz v. United States*, 521 U.S. 898, 918-922 (1997) (discussing Constitution's allocation of authority between federal and state sovereign governments).

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

Response: As I understand it, the power of Congress under the Commerce Clause, in conjunction with the Necessary and Proper Clause, may possibly extend in some instances to the regulation of non-economic activity if it is necessary to Congress's ability to regulate interstate commercial activity. *See, e.g., Gonzales v. Raich*, 545 U.S. 1, 19 (2005) (upholding application of federal controlled substances law to prohibit home-grown cultivation and home-use of marijuana "because production of the commodity meant for home consumption, be it wheat or marijuana, has a substantial effect on supply and demand in the national market for that commodity"). *See also id.* at 37-38 (Scalia, J., concurring in judgment) (noting in part that "Congress may regulate even noneconomic local activity if that regulation is a necessary part of a more general regulation of interstate commerce," but that "Congress may regulate noneconomic intrastate activities only where the failure to do so could ... undercut its regulation of interstate commerce") (internal citation and quotations omitted).

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

Response: If I were to be confirmed to serve as a federal district judge, I would consider several factors in determining a case that poses a challenge to an executive order or other executive action. First, Article III of the Constitution limits judicial power to genuine "cases or controversies," and the Supreme Court therefore requires that a plaintiff party establish standing (*i.e.*, injury, causation and redressability) in order for a court to consider imposing a limit on executive action. *See, e.g., Clapper v. Amnesty Int'l USA*, 133 S. Ct. 1138, 1146-47 (2013). Second, the Supreme Court has limited the authority of courts to intervene in matters that are committed to the discretion or determination of the political branches and thus within the scope of the "political question" doctrine. *See, e.g., Zivotofsky ex rel. Zivotofsky v. Clinton*, 132 S.Ct. 1421, 1427 (2012). Third, in cases where the bounds of executive action are claimed to conflict with the constitutional lawmaking authority of Congress, the Supreme Court abides by a long-established tripartite framework to consider whether the President has exceeded his constitutional authority. *See, e.g., Medellín v. Texas*, 552 U.S. 491, 524-25 (2008) (citing *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (Jackson, J., concurring)). In addition, judicially enforceable limits on executive action may stem from specific provisions of the Bill of Rights, *see, e.g., Reid v. Covert*, 354 U.S. 1, 5-12 (1957) (plurality opinion), from the Constitution's reservation of certain powers to the States, *see, e.g., Medellín*, 552 U.S. at 531, or from other specific statutory limitations or conditions on the exercise of presidential power, *see, e.g., Hamdan v. Rumsfeld*, 548 U.S. 557, 613 (2006). Executive agency actions may also be judicially reviewable under the Administrative Procedure Act or other statutes specifically authorizing judicial review. *See, e.g., Sackett v. EPA*, 132 S. Ct. 1367 (2012).

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

Response: The Supreme Court has ruled that a right is "fundamental" only if "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, 721 (1997) (internal citations and quotations omitted); *see also id.* at 720 (listing precedents involving “‘liberty’ specially protected by the Due Process Clause”).

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

Response: The Supreme Court has ruled that “equal protection analysis requires strict scrutiny of a legislative classification only when the classification impermissibly interferes with the exercise of a fundamental right or operates to the peculiar disadvantage of a suspect class.” *Mass. Bd. of Retirement v. Murgia*, 427 U.S. 307, 312 (1976). *See also City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 440 (1985) (noting that “strict scrutiny” applies to classifications based on “race, alienage or national origin” or when “laws impinge on personal rights protected by the Constitution,” and further noting that otherwise “heightened” review applies for classifications based on gender and illegitimacy).

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 were to be confirmed to serve as a federal district judge, I would be bound by and follow the decisions of the United States Supreme Court and the United States Court of Appeals for the Second Circuit concerning affirmative action and whether and when racial preferences may no longer be necessary in public higher education. The Supreme Court has recently applied *Grutter v. Bollinger* to allow continued use of affirmative action for public higher education admissions but subject to a demanding burden of strict scrutiny review, requiring “a careful judicial inquiry into whether a university could achieve sufficient diversity without using racial classifications” and that “[t]he reviewing court must ultimately be satisfied that no workable race-neutral alternatives would produce the educational benefits of diversity.” *Fisher v. Univ. of Texas at Austin*, 133 S. Ct. 2411, 2420 (2013).