

**Response of Nelson Stephen Román
Nominee to be United States District Judge for the Southern District of New York
to the Written Questions of Senator Ted Cruz**

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: A judge must decide matters fairly, impartially and promptly, and treat all parties that come before the court with respect. A judge must at all times respect the rule of law and understand the limited role of judges within our constitutional system. This means that judges should exercise judicial restraint in all matters by deciding only the issues in controversy before them and applying prevailing applicable precedent. While I have great respect and admiration for the justices of the Supreme Court, I do not consider myself a student of the Supreme Court and I have not closely followed the judicial philosophy of a particular justice.

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. In a number of cases, the Supreme Court has looked at the original intent behind various Constitutional provisions. If confirmed, I would apply all such precedent.

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: A district court judge is constrained by the doctrine of stare decisis to apply precedential authority issued by the Supreme Court and the court of appeals of the circuit in which he or she sits. If confirmed, I would, therefore, not overrule any precedent as a district court judge.

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: If confirmed as a district court judge, I would apply the precedent articulated by *Garcia v. San Antonio Metropolitan Transit Authority* regardless of my personal view on the more proper method to protect State sovereign interests.

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 and presented with a case that requires me to determine whether Congress could regulate a particular non-economic activity, I would apply *Lopez* and any other relevant precedent of the Supreme Court and the Second Circuit.

Presidential Power

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

Response: The judicial branch can limit actions by the President that violate the Constitution or a statute properly enacted by Congress, or that exceed authority granted to the President by those sources of law. See generally *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

Individual Rights

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

Response: For purposes of the substantive due process doctrine, Chief Justice Rehnquist in *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997), stated that in addition to the specific freedoms protected by the Bill of Rights, fundamental rights include the “rights to marry, to have children, to direct the education and upbringing of one's children, to marital privacy, to use contraception, to bodily integrity, and to abortion.” The *Glucksberg* case also recognized that the Court had “assumed, and strongly suggested, that the Due Process Clause protects the traditional right to refuse unwanted lifesaving medical treatment.” *Id.*

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

Response: Following Supreme Court precedent, a classification should be subjected to two separate forms of heightened scrutiny under the Equal Protection Clause, depending on the type of classification used. When a state law differentiates individuals by race, national origin, or (in most circumstances) alienage, strict scrutiny should be used. When a law differentiates individuals by gender or legitimacy of birth, intermediate scrutiny should be used.

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: I am hopeful that our nation will continue to progress to racial equality. If confirmed, I would abide by Supreme Court precedent regardless of my personal views and expectations.