

**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 Amy Klobuchar**

- 1. If you had to describe it, how would you characterize your judicial philosophy? How do you see the role of the judge in our constitutional system?**

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 should apply prevailing applicable precedent.

- 2. What assurances can you give that litigants coming into your courtroom will be treated fairly regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff?**

Response: Judges must be impartial and treat all parties with respect regardless of their socio-economic status or political beliefs. As a judge for approximately fifteen years, both at the state trial court and appellate court levels, I have demonstrated a commitment to approach each and every matter with an open mind. I have endeavored to treat all parties respectfully and impartially. If confirmed, I would continue to give all parties equal respect and consideration.

- 3. In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? How does the commitment to stare decisis vary depending on the court?**

Response: District court judges are duty bound to apply precedential authority issued by the Supreme Court and by the court of appeals of the circuit in which they sit. As I have demonstrated over the course of my career, I am fully prepared to apply such precedent. The obligation to follow precedent applies to all courts—trial and appellate courts.

**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 Chuck Grassley**

**1. Do you believe that diversity on the bench is important?**

Response: Yes.

**a. If so, why?**

Response: Diversity in the judiciary helps promote public trust and confidence.

**b. Does the gender or ethnic background of a judge influence the way a judge views the law, shape a judge's approach to interpreting text, or otherwise affect the judicial process?**

Response: A judge's gender or ethnic background should not influence his or her view of the law, shape his or her approach to interpreting text, or otherwise affect the judicial process.

**c. What steps should a judge take to ensure personal views or background does not influence the outcome of the judicial process.**

Response: To ensure personal views and background do not influence the outcome of the judicial process, a judge should first give each party equal opportunity to be heard and to present its case. Then, the judge should adhere strictly to the applicable law, interpreting statutes carefully, following precedent faithfully, and applying the law to the facts accordingly. My track record as a judge for over 15 years demonstrates my ability to refrain from allowing my personal views to affect my decisionmaking process.

**2. What is the most important attribute of a judge, and do you possess it?**

Response: The most important attribute of a judge is the ability to apply the law fairly and impartially to all cases. In so doing, the judge must be mindful of his or her duty to exercise judicial restraint, thereby deciding only the issues in controversy and applying applicable precedent. I believe I possess this attribute.

**3. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: A judge should exercise patience and civility, and should behave in a dignified and professional manner at all times. I believe I meet this standard.

4. **In general, Supreme Court precedents are binding on all lower federal courts, and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: Yes.

5. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: Absent controlling precedent, when interpreting statutes, I would look first to the plain meaning of the statutory language, and then to legislative history only if necessary to resolve ambiguities. I would also look to federal court interpretations of similar statutory language. For other issues, I would look to opinions of the Supreme Court and the Court of Appeals for the Second Circuit that were rendered in analogous situations. If no such opinions existed, I would look to decisions of other federal circuit courts.

6. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: It is the duty of a district court judge to apply precedential authority issued by the Supreme Court and the Court of Appeals of the circuit in which he or she sits. As a district court judge, I would apply the law as articulated in decisions with which I disagreed regardless of my personal feelings. I have demonstrated over the course of my career as a state court judge that I am fully prepared to apply such precedent.

7. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: When a party challenges the constitutionality of a federal statute, a federal court may appropriately declare that statute unconstitutional either when it violates a constitutional provision or when Congress had exceeded its authority in enacting the statute. In making any such determination, I would proceed cautiously and follow strictly the Supreme Court's interpretation of the pertinent constitutional provision.

8. **In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution?**

Response: No, I do not believe it is proper for a U.S. district court judge to rely on foreign law, or the views of the “world community,” in determining the meaning of the U.S. Constitution.

- 9. As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?**

Response: As a state trial court judge, I also faced the pressure of a heavy caseload. My approach there was to insist upon strict adherence to established scheduling calendars, to streamline discovery wherever possible, to facilitate settlement negotiations, to encourage mediation, and to resolve motions expeditiously. If confirmed, I would continue these proactive management techniques in coordination with the magistrate judges of the Southern District of New York.

- 10. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?**

Response: Judges certainly have a role in controlling the pace and conduct of litigation. Regarding the pace of litigation, a judge owes the parties a duty to administer the proceedings impartially and efficiently. If confirmed, I would decide the issues before me carefully, practically and as quickly as possible, set reasonable scheduling timetables, and encourage and facilitate mediation and settlement. Regarding the conduct of litigation, a judge must exude dignity, professionalism and civility, and ensure that the parties follow his or her example. I would continue to comport myself appropriately and insist upon the same from all involved.

- 11. As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance?**

Response: Before reaching a decision, I consider testimony, documents submitted by the parties, and the arguments made. I then rely on applicable statutes, regulations, and precedential interpretations of law in deciding whether to grant judgment to one party or another.

- 12. Please explain your understanding of the major differences you will encounter between being a state court judge and a United States District Judge. How will you prepare for and accomplish this transition?**

Response: While state courts may hear most cases and controversies arising under the Constitution and laws of the United States, such cases tend to be brought infrequently. If confirmed, I would expect to hear many more cases dealing with federal questions, meaning that consideration of federal law will be much more common. Rules of evidence and procedure differ to a degree between state and federal courts. I would accomplish the transition to federal court by diligent study

and application of federal law, just as I have done with state law. Additionally, I have observed several district court proceedings, reviewed materials provided by the Federal Judicial Center, and attended several continuing legal education courses dealing with substantive federal law topics.

**13. What effect will your experience as an appellate judge have on your performance as a trial judge?**

Response: As a former trial court judge for over ten years, I have experience conducting hearings and trials, managing a case load, setting discovery schedules, facilitating settlement discussions, and tracking motions and setting time schedules for the efficient resolution of pending motions. As an appellate judge I learned firsthand the necessity of a full and accurate record to the proper resolution of a motion or a case. If confirmed, my previous experience would help me to fully delineate the applicable rule of law and to provide a clear legal analysis after fostering a full development of the factual record by the parties.

**14. Please describe with particularity the process by which these questions were answered.**

Response: After considering each question carefully, I drafted responses that were reviewed by representatives from the Department of Justice. I then finalized my responses and forwarded them to the Department of Justice for submission to the Judiciary Committee.

**15. Do these answers reflect your true and personal views?**

Response: Yes.

**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.



**Written Questions of Senator Jeff Flake**

Nelson Stephen Román

*Nominee, to be United States District Judge for the Southern District of New York*

U.S. Senate Committee on the Judiciary

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**1. What qualities do you believe all good judges possess?**

Response: All good judges should possess the ability to apply the law fairly and impartially to all cases. At the same time, they should be mindful of their duty to exercise judicial restraint, thus deciding only the issues in controversy while following applicable precedent. Furthermore, they should exude dignity, professionalism, civility and respect for the rule of law, and ensure that parties conduct themselves appropriately.

**a. How does your record reflect these qualities?**

Response: My written decisions at the state trial and appellate levels reflect my commitment to fair and impartial application of the laws, as well as to judicial restraint. My reputation in the New York City legal community reflects the standard of professionalism that all good judges should meet.

**2. Do you believe judges should look to the original meaning of the words and phrases in the Constitution when applying it to current cases?**

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.

**a. If so, how would you determine the original meaning?**

Response: I would follow Supreme Court precedent that has addressed the issue of original meaning. *See, e.g., District of Columbia v. Heller, 554 U.S. 570 (2008).*

**3. In Federalist Paper 51, James Madison wrote: “In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.” In what ways do you believe our Constitution places limits on the government?**

Response: The Constitution enumerates certain powers that the federal government may exercise, yet it also places limits on government by reserving unenumerated powers to the states or the people and prohibiting the federal and state governments from exercising certain other powers. Additionally, the Constitution divides the executive, legislative, and judicial powers among the three branches of government while also requiring certain

governmental actions to be approved by another branch. For instance, laws cannot be established by Congress until presented to the President, who may sign or veto the bill.

**a. How does the Judicial Branch contribute to this system of checks and balances?**

Response: The Judicial Branch is charged with the task of interpreting the law. Thus, if an executive action does not comport with a duly enacted statute, if a statute violates a constitutional provision, or if Congress has exceeded its authority in enacting a statute, the Judicial Branch contributes to the system of checks and balances by invalidating such an action or statute.

**4. Since at least the 1930s, the Supreme Court has expansively interpreted Congress' power under the Commerce Clause. Recently, however, in the cases of *United States v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000), the Supreme Court has imposed some limits on that power.**

**a. Some have said the Court's decisions in *Lopez* and *Morrison* are inconsistent with the Supreme Court's earlier Commerce Clause decisions. Do you agree? Why or why not?**

Response: The Supreme Court explained that, unlike the federal laws previously considered in other Commerce Clause cases, the laws at issue in *Morrison* and *Lopez* lacked a sufficient connection to commercial or economic activity that substantially affected interstate commerce. They were therefore invalidated.

**b. In your opinion, what are the limits to the actions the federal government may take pursuant to the Commerce Clause?**

Response: According to *Lopez*, the federal government's authority under the Commerce Clause is limited to three categories: first, it "may regulate the use of the channels of interstate commerce"; second, it "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, it may "regulate those activities having a substantial relation to interstate commerce, i.e., . . . that substantially affect interstate commerce." 514 U.S. at 558–59.

**c. Is any transaction involving the exchange of money subject to Congress's Commerce Clause power?**

Response: No. Under the Supreme Court's interpretation, Congress's Commerce Clause power does not extend to every transaction involving the exchange of money.

**5. What powers do you believe the 10<sup>th</sup> Amendment guarantees to the state? Please be specific.**

Response: According to Chief Justice John Marshall, it was “neither necessary nor proper” for the drafters of the Tenth Amendment “to define the powers retained by the States,” which proceed “not from the people of America, but from the people of the several States,” *Sturgis v. Crowninshield*, 17 U.S. (4 Wheat.) 122, 193 (1819), because states retained all the powers they initially had which were not granted to the federal government. Accordingly, the Supreme Court has recognized that the Tenth Amendment guarantees to the state its police power to regulate such matters as health, safety, welfare, and morals within the state, including regulation of contractual relationships, tort law, property rights, land use, corporate law, education, professional and business licensing, and public safety.