

**Senator Chuck Grassley**  
**Questions for the Record**

**Jeffrey Alker Meyer**  
**Nominee, U.S. District Judge for the District of Connecticut**

- 1. At your hearing, I asked you about your views on the death penalty, but I would like a little further clarification. In 2008 you signed onto a letter to Governor Rell and Members of the Connecticut General Assembly in support of repeal of the Connecticut death penalty. Then in 2011, you said that halting the repeal of the death penalty is “certainly our hope.” Can you explain this contradiction?**

Response: In April 2008, I co-signed a letter on behalf of more than two dozen professors supporting repeal of Connecticut’s death penalty law. I joined this letter because I had policy concerns about specific defects in Connecticut’s death penalty law, including that it lacked safeguards against potential racial discrimination and that it lacked any mechanism for the review of a local county prosecutor’s decision to seek the death penalty. Notably, Connecticut’s law was unlike the federal death penalty process, which includes specific safeguards against racial discrimination and which has extensive consultation and discovery procedures for federal prosecutors to follow before the Attorney General of the United States—and only he or she—may decide that the death penalty should be charged. *See* 18 U.S.C. § 3593(f); United States Attorneys’ Manual 10-100 *et seq.*

In 2011, I represented Dr. William A. Petit, Jr., and as an advocate for my client, I worked to prevent the repeal of Connecticut’s death penalty law. Dr. Petit had requested my legal advice and assistance in connection with his rights as a victim relating to the death penalty trials of two men who broke into his home in Cheshire, Connecticut, attacked and tied-up Dr. Petit, and then kidnapped, raped, burned, and murdered his wife and daughters. I agreed to represent Dr. Petit *pro bono* because I believe that the death penalty is an appropriate and just punishment for the most heinous kinds of crimes like the horrific murders of Dr. Petit’s family. My policy concerns about the defects of Connecticut’s law were not implicated by Dr. Petit’s case. I attended the trials of the two murderers of Dr. Petit’s family, and I worked with and co-testified with Dr. Petit before the Connecticut legislature in March 2011 in support of our proposed legislative reform to allow surviving victim family members in death penalty cases to present victim impact statements at trial. When the legislature appeared poised to repeal the death penalty, Dr. Petit, his sister, and I met with legislators in May 2011 to seek to persuade them not to repeal Connecticut’s death penalty law, because the then-proposed repeal would have severely disrupted the ongoing trial of the second murderer of Dr. Petit’s family. Our efforts were successful, and both murderers of Dr. Petit’s family have been convicted and are now on Connecticut’s death row. The Connecticut legislature later repealed Connecticut’s death penalty law in 2012 but for future cases only and not for the murderers of Dr. Petit’s family.

I will note that my efforts as a law professor in 2008 and my efforts as an advocate for a client in 2011 would not impact how I would treat death penalty cases if I were confirmed to serve as a federal district judge. The United States Supreme Court has ruled that the

death penalty is constitutional, and I would follow the law concerning application of the death penalty in any case that might come before me.

- 2. In *DePierre v US*, you argued that the mandatory minimum applying to drug trafficking offenses of crack cocaine should not apply to other forms of cocaine that could fall under the definition of having a “cocaine base.” What is your view of mandatory minimums and how would you use Sentencing Guidelines in general, if you were confirmed?**

Response: Based on nearly ten years of service as a federal criminal prosecutor, I am familiar with and have charged criminal defendants with mandatory minimum crimes. The case of *DePierre v. United States*, in which I co-represented a criminal defendant, did not challenge the validity of mandatory minimum sentencing statutes in general; instead, we contended on the basis of wording of a particular statute that our client did not meet the criteria for the mandatory minimum statute to apply. If I were confirmed to serve as a federal district judge, my role would not be as an advocate for a client but to follow the law, including laws requiring imposition of a mandatory minimum sentence.

When I served as a federal criminal prosecutor, I also sought to have defendants sentenced in accordance with the United States Sentencing Guidelines. Although the Supreme Court has ruled that the Guidelines are no longer mandatory upon sentencing judges (*United States v. Booker*, 543 U.S. 220 (2005)), federal law still requires a district court to give “respectful consideration” to the Guidelines to determine an appropriate sentence (*Kimbrough v. United States*, 552 U.S. 85, 100 (2007) (citing 18 U.S.C. § 3553(a)). I also value the goal of the Guidelines to avoid unwarranted sentencing disparities. If I were confirmed to serve as a federal district judge, I would follow the law mandating consideration of the United States Sentencing Guidelines.

- 3. You have written “Our privacy is ebbing away year by year,” that “It’s clearly beyond dispute that we are losing our actual protection,” and also that “the right choice [for the Supreme Court] is to affirm our rights in our homes and our persons to be free, in the absence of emergency circumstances, from the warrantless use of dogs and sense-enhancing technology.” What role would you have as a judge in terms of restricting incursions on privacy and how would you approach such cases?**

Response: The expansion of technological and sense-enhancing surveillance capabilities poses new challenges to personal privacy, and the Fourth Amendment as well as other statutory provisions of federal law protect individuals from unreasonable searches and seizures. For example, the Supreme Court has recently ruled that the Fourth Amendment applies when the police trespass on a person’s front porch with a drug-sniffing dog to detect odors inside the person’s home (*Florida v. Jardines*, 133 S. Ct. 1409 (2013)) and that the Fourth Amendment applies when the police attach and use a GPS tracking device to monitor the movements of a suspect’s car (*United States v. Jones*, 132 S. Ct. 945 (2012)). If confirmed to serve as a federal district judge, I would apply these and other relevant precedents of the United States Supreme Court and the United States Court of Appeals for the Second Circuit in cases involving alleged incursions on privacy.

4. **In a 2011 article discussing a proposal to let non-citizen residents vote in municipal elections, you were quoted as saying “it strikes me as highly unlikely that the Constitution would prohibit this. It doesn’t appear to require municipalities to screen for U.S. citizens.”**

- a. **By that reasoning could municipalities enact other laws affecting municipal elections, so long as the U.S. Constitution had no prohibition?**

Response: The above quote was intended to make the point that the explicit text of the federal Constitution does not prohibit state and local governments from permitting non-citizens to vote in municipal elections. With respect to whether municipalities could enact other laws affecting municipal elections, the United States Supreme Court has ruled that “the right of suffrage is subject to the imposition of state standards which are not discriminatory and which do not contravene any restriction that Congress, acting pursuant to its constitutional powers, has imposed.” *Harper v. Virginia State Board of Elections*, 383 U.S. 663, 665 (1966) (internal citation and quotations omitted). The 2011 news article referenced in the question above noted that the Connecticut State Constitution requires that all voters be citizens, and this separate requirement very likely forecloses the non-citizen voter proposal as a matter of state constitutional law.

- b. **Or alternatively, if municipalities allow non-citizens to vote in municipal elections, do the same rights that citizens enjoy apply to those non-citizens? For example could a municipality enact a law that let only male non-citizens vote, or restrict the voting age of non-citizens?**

Response: If I were to be confirmed to serve as a federal district judge, I would address this question by reference to applicable legal precedent concerning application of the Equal Protection Clause to non-citizens. The Supreme Court has ruled that illegal aliens within the United States may be protected by the Equal Protection Clause. *See, e.g., Plyler v. Doe*, 457 U.S. 202, 210-211 (1982). *See also Bernal v. Fainter*, 457 U.S. 216, 219 (1984) (noting that “[a]s a general matter, a state law that discriminates on the basis of alienage can be sustained only if it can withstand strict judicial scrutiny”). The precise application of the Equal Protection Clause in this context would require additional inquiry in light of more specific facts. To resolve any such issue, I would follow precedent of the United States Supreme Court and the United States Court of Appeals for the Second Circuit.

5. **Some legal scholars have argued that judges should have discretion to sentence leniently in cases where defendants are remorseful, have dependents, are ill, have reformed, or are community heroes. To what extent do you think mercy has a place in the judicial process?**

Response: If I were to be confirmed as a federal district judge, my sentencing decisions would not be determined by the theories of legal scholars but by factors set forth as relevant by Congress, the Sentencing Commission, and higher courts of authority. The principal federal sentencing statute identifies the following general factors that a judge should consider at sentencing, to include “the nature and circumstances of the offense and the history and characteristics of the defendant,” as well as “the need for the sentence imposed—(A) to reflect the seriousness of the offense, promote respect for the law, and to provide just punishment for the offense; (B) to afford adequate deterrence to criminal conduct; (C) to protect the public from further crimes of the defendant; and (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.” 18 U.S.C. § 3553(a). The statute also requires judges to sentence in light of “the need to avoid unwarranted sentencing disparities.” *Ibid.* In addition, the United States Sentencing Guidelines furnish guidance about defendant-specific factors that may warrant consideration at sentencing. *See generally United States Sentencing Guidelines, Part H* (describing potential sentencing relevance of age, physical condition, mental and emotional conditions, employment record, family ties and responsibilities, military service, and record of prior good works).

- 6. You were a panelist for a forum on federal judicial appointments sponsored by the Federalist Society at Quinnipiac University School of Law on September 26, 2007. You did not provide any notes, a transcript, or a recording. Please explain what you discussed on this panel and further your perspective on federal judicial appointments.**

Response: I do not recall the substance of my remarks at this panel. The principal participant for this panel was Ronald Cass, who is the former Dean of Boston University School of Law and who was invited by the Quinnipiac University Law School Federalist Society to speak on the topic of federal judicial appointments. I believe that I was invited by the Federalist Society as a faculty host/moderator for Dean Cass’s visit. I have no notes and do not recall preparing any remarks. I do not have any developed views or perspective on federal judicial appointments.

- 7. Please provide more detail on these two panels that you participated in.**

- a. “Racial Profiling,” March 5, 2008, Quinnipiac University School of Law, American Constitution Society.**

Response: I recall few details of this event, and I have no notes or other record of my remarks. I believe that a co-panelist was a local police officer and recent alumnus of Quinnipiac University School of Law who spoke concerning his practical law enforcement experience. I believe I addressed the lack of enforcement of Connecticut’s racial profiling law as later set forth in my commentary in the Connecticut Law Tribune: *Racial Profiling – Lift Rug, Sweep Under*, CONN. L. TRIB., Aug. 24, 2009 (copy previously supplied).

- b. “Trade Sanctions in a 21st Century Economy,” February 29, 2008, University of Pennsylvania School of Law.**

Response: On the basis of my work investigating the United Nations trade sanctions and its humanitarian “oil-for-food” program in Iraq, I was invited to participate in this one-day symposium at the University of Pennsylvania Law School. Although I do not have notes or other records of my remarks at the symposium event, I recall that my presentation concerned the legality of so-called “secondary sanctions” and that the presentation served as the basis for my subsequent scholarly article that I published as part of this symposium in the University of Pennsylvania Journal of International Law. See Jeffrey A. Meyer, *Second Thoughts on Secondary Sanctions*, 30 U. PENN. J. INT’L L. 905 (2009) (copy previously supplied).

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

Response: I believe that among the most important attributes of a judge is a deep commitment to impartiality. This attribute is the foundation for other judicial virtues, including rigorous review and research of the parties’ presentation of the facts and law and true open-mindedness until the point of reaching a final decision. I believe I am committed to being impartial and will strive to cultivate and maintain this quality.

**9. 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: In my view, a judge must always treat all parties with courtesy and respect while also setting high expectations and standards for the parties to engage in prompt and efficient resolution of their disputes. A judge should also make clear his or her commitment to applying the rule of law regardless of personal preference. I believe I possess the appropriate temperament to be a judge and that, if confirmed, I would strive to maintain this temperament.

**10. 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. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: If confirmed as a federal district judge, I would follow the precedent of the United States Supreme Court and the United States Court of Appeals for the Second Circuit, regardless whether I might personally agree with such precedent.

**11. 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: If I were confirmed to serve as a federal district judge and confronted with a case of first impression, I would be guided by the text of any statute or provision at issue

and also by any analogous precedent from higher courts. If the text of the statute were ambiguous, I would resort to well established principles of interpretation that look to structure, context, and other indicia of the Framers' or legislative intent. For cases involving challenges to federal statutes, I would begin with the presumption that statutes are constitutional. *See, e.g., United States v. Morrison*, 529 U.S. 598, 607 (2000). For cases involving administrative law, I would examine the application of agency deference principles. *See, e.g., Chevron USA Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 844 (1984). For cases involving state law and state court judgments, I would be sensitive to federalism concerns and related statutes and doctrines that restrict the authority of federal judges to overturn state court judgments. *See, e.g., Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938); 28 U.S.C. § 2254(d).

**12. 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: If I were confirmed to serve as a federal district judge, I would apply the precedent of the United States Supreme Court and the United States Court of Appeals for the Second Circuit regardless of any personal feelings I might have about the precedent. Although I could note my concerns about the correctness of a higher court decision, I would understand that I must follow the precedent and leave it to the higher court to decide whether to reconsider its own precedent. *See, e.g., Agostini v. Felton*, 521 U.S. 203, 237-38 (1997) (noting that “[i]f a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions” and that district courts also should follow precedent) (internal citation and quotations omitted).

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

Response: If I were confirmed to serve as a federal district judge, I would understand that a statute enacted by Congress is presumed to be constitutional and that a federal court should declare a statute to be unconstitutional “only upon a plain showing that Congress has exceeded its constitutional bounds.” *United States v. Morrison*, 529 U.S. 598, 607 (2000). In addition, under the doctrine of constitutional avoidance, a court should consider whether a statute may be interpreted in a manner that avoids a conclusion that it is unconstitutional. *See, e.g., Clark v. Martinez*, 543 U.S. 371, 381-82 (2005).

**14. 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? Please explain.**

Response: If I were confirmed to serve as a federal district judge, I would not rely on foreign law or the views of the world community to determine the meaning of the United States Constitution, except to the extent authorized or required by precedent of the United States Supreme Court or the United States Court of Appeals for the Second Circuit. *See,*

*e.g., United States v. Jones*, 132 S. Ct. 945, 949 (2012) (citing English common law precedent for purposes of interpreting the scope of the Fourth Amendment).

- 15. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?**

Response: Political ideology and motivation have no place in judicial decisionmaking. If confirmed, my decisions would always be grounded in the text of the law and precedent. Based on my service of nearly ten years as a federal criminal prosecutor and other practical experience, I am confident that I would not permit any political ideology or motivations to influence my judicial decisions.

- 16. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?**

Response: If confirmed, I would know that I must always be impartial and that I must put aside any personal views I might have to ensure that I am fair to all who appear before me. In light of my service of nearly ten years as a federal criminal prosecutor and other practical experience, I believe that I would not permit my personal views to influence my judicial decisions.

- 17. If confirmed, how do you intend to manage your caseload?**

Response: I would understand the great importance of efficiently managing my caseload and promptly rendering decisions on filed motions. I would engage actively with counsel for all parties to set firm expectations and deadlines toward resolution of each case. I would also work closely with Magistrate Judges and exercise authority under Rules 16 and 26(f) of the Federal Rules of Civil Procedure to ensure appropriate constraints on discovery and the filing of motions.

- 18. 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: If confirmed to serve as a federal district judge, I would play an active role in controlling the pace and conduct of litigation to ensure against inappropriate delay in the resolution of cases. I would engage with all parties to set firm expectations and deadlines toward resolution of each case. I would also work closely with Magistrate Judges and use the tools available under the Federal Rules of Civil Procedure to ensure appropriate constraints on discovery and the filing of motions.

- 19. You have spent your entire legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be the most difficult part of this transition for you?**

Response: If confirmed to serve as a federal district judge, I would be acutely aware of the very different roles of an advocate and a judge. The role of a judge is not to assist or favor any one party but to be impartial always in finding facts and applying the law. I would reach decisions based upon allowing each of the parties a fair opportunity to present evidence and arguments. For questions of law, I would look first to the text of any applicable law and to any precedent of the United States Supreme Court and the United States Court of Appeals for the Second Circuit. I expect that the most difficult part of the transition for me would be to ensure that I manage my caseload efficiently to meet the parties' expectations for prompt scheduling and decisionmaking.

**20. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".**

- a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.**

Response: I have not had any contact with the American Association for Justice (AAJ), with the AAJ Judicial Task Force, or with any individual or group that I know to be associated with the AAJ regarding my nomination.

- b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.**

Response: I am not aware of any endorsements or promised endorsements by the AAJ, the AAJ Judicial Task Force, or any individual or group associated with the AAJ regarding my nomination.

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

Response: I received the questions on July 31, 2013. After reviewing the questions and conducting pertinent legal research and review of my records, I drafted responses to each of these questions and forwarded my draft responses to the Department of Justice's Office of Legal Policy. After receiving comments, I revised my responses and authorized the submission of my responses to the Committee.



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

Response: Yes.

**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).