

**Nomination of Tilman Self III to the
U.S. District Court for the Middle District of Georgia
Questions for the Record
Submitted October 11, 2017**

QUESTIONS FROM SENATOR FEINSTEIN

1. Please respond with your views on the proper application of precedent by judges.

a. When, if ever, is it appropriate for a district court to depart from Supreme Court or the relevant circuit court's precedent?

It is not appropriate for a district court to depart from Supreme Court or relevant circuit precedent.

b. When, if ever, is it appropriate for a district court judge to question Supreme Court or the relevant circuit court's precedent?

In general, I don't think it is appropriate for a lower court to question a higher court's precedent. In a rare case, a lower court could potentially identify a new factor for the circuit court to consider such as a change in a statute or Supreme Court ruling that may call a current precedent into question. However, a district court would nonetheless be bound to follow the binding precedent.

2. When Chief Justice Roberts was before the Committee for his nomination, Senator Specter referred to the history and precedent of *Roe v. Wade* as "super-stare decisis." A textbook on the law of judicial precedent, co-authored by Justice Neil Gorsuch, refers to *Roe v. Wade* as a "super-precedent" because it has survived more than three dozen attempts to overturn it. The book explains that "superprecedent" is "precedent that defines the law and its requirements so effectively that it prevents divergent holdings in later legal decisions on similar facts or induces disputants to settle their claims without litigation." (The Law of Judicial Precedent, Thomas West, p. 802 (2016))

a. Do you agree that *Roe v. Wade* is "super-stare decisis"? "superprecedent"?

I am not familiar with the term "super-stare decisis." Likewise, I have not read Justice Gorsuch's book nor am I familiar with the term "superprecedent." However, I very much understand the concept of precedent and I will follow it.

b. Is it settled law?

Yes.

3. In *Obergefell v. Hodges*, the Supreme Court held that the Constitution guarantees same-sex couples the right to marry.

a. Is the holding in *Obergefell* settled law?

Yes.

b. On Friday, June 30, the Texas Supreme Court issued a decision in *Pidgeon v. Turner* which narrowly interpreted *Obergefell* and questioned whether states were required to treat same-sex couples equally to opposite-sex couples outside the context of marriage licenses. The Texas Supreme Court stated that “The Supreme Court held in *Obergefell* that the Constitution requires states to license and recognize same-sex marriages to the same extent that they license and recognize opposite-sex marriages, but it did not hold that states must provide the same publicly funded benefits to all married persons, and... it did not hold that the Texas DOMAs are unconstitutional.” Is this your understanding of *Obergefell*?

During my tenure as a state trial judge and state appellate judge, I have not been called on to interpret *Obergefell*. Thus, I have not studied the holding in any detail and have only read portions of the case. I have also not studied the Texas DOMAs in question nor have I read *Pidgeon*.

However, if confirmed, I would study *Obergefell* in detail and strictly follow the holding as I would any and all other federal precedent.

4. In Justice Stevens’s dissent in *District of Columbia v. Heller* he wrote: “The Second Amendment was adopted to protect the right of the people of each of the several States to

maintain a well-regulated militia. It was a response to concerns raised during the ratification of the Constitution that the power of Congress to disarm the state militias and create a national standing army posed an intolerable threat to the sovereignty of the several States. Neither the text of the Amendment nor the arguments advanced by its proponents evidenced the slightest interest in limiting any legislature's authority to regulate private civilian uses of firearms.”

a. Do you agree with Justice Stevens? Why or why not?

As a nominee to the District Court, it would not be appropriate for me to express an opinion as to an issue that I may ultimately have to decide. If confirmed, I will follow *Heller* and all applicable United States Supreme Court and United States Court of Appeals for the Eleventh Circuit precedent.

b. Did *Heller* leave room for common-sense gun regulation?

As a nominee to the District Court, it would not be appropriate for me to express an opinion as to an issue that I may ultimately have to decide. If confirmed, I will follow *Heller* and all applicable United States Supreme Court and United States Court of Appeals for the Eleventh Circuit precedent.

c. Did *Heller*, in finding an individual right to bear arms, depart from decades of Supreme Court precedent?

As a nominee to the District Court, it would not be appropriate for me to express an opinion as to an issue that I may ultimately have to decide. If confirmed, I will follow *Heller* and all applicable United States Supreme Court and United States Court of Appeals for the Eleventh Circuit precedent.

5. In *Citizens United v. FEC*, the Supreme Court held that corporations have free speech rights under the First Amendment and that any attempt to limit corporations' independent political expenditures is unconstitutional. This decision opened the floodgates to unprecedented sums of dark money in the political process.

a. Do you believe that corporations have First Amendment rights that are equal to individuals' First Amendment rights?

As a nominee to the District Court, it would not be appropriate for me to express an opinion as to an issue that I may ultimately have to decide. If confirmed, I will follow *Citizens United* and all applicable United States Supreme Court and United States Court of Appeals for the Eleventh Circuit precedent.

b. Do individuals have a First Amendment interest in not having their individual speech drowned out by wealthy corporations?

As a nominee to the District Court, it would not be appropriate for me to express an opinion as to an issue that I may ultimately have to decide. If confirmed, I will follow *Citizens United* and all applicable United States Supreme Court and United States Court of Appeals for the Eleventh Circuit precedent.

c. Do you believe corporations also have a right to freedom of religion under the First Amendment?

As a nominee to the District Court, it would not be appropriate for me to express an opinion as to an issue that I may ultimately have to decide. If confirmed, I will follow *Citizens United* and all applicable United States Supreme Court and United States Court of Appeals for the Eleventh Circuit precedent.

6. You indicate on your Senate Questionnaire that you have been a member of the Federalist Society since 2008. The Federalist Society’s “About Us” webpage states that, “[I]aw schools and the legal profession are currently strongly dominated by a form of orthodox liberal ideology which advocates a centralized and uniform society. While some members of the academic community have dissented from these views, by and large they are taught simultaneously with (and indeed as if they were) the law.” The same page states that the Federalist Society seeks to “reorder[] priorities within the legal system to place a premium on individual liberty, traditional values, and the rule of law. It also requires restoring the recognition of the importance of these norms among lawyers, judges, law students and professors. In working to achieve these goals, the Society has created a conservative and libertarian intellectual network that extends to all levels of the legal community.”

a. Please elaborate on the “form of orthodox liberal ideology which advocates a centralized and uniform society” that the Federalist Society claims dominates law schools.

I do not know what the author of that page meant when using those terms.

b. As a member of the Federalist Society, explain how exactly the organization seeks to “reorder priorities within the legal system.”

I do not know what the author of that page meant when using those terms.

- c. As a member of the Federalist Society, explain what “traditional values” you understood the organization placed a premium on.**

I do not know what the author of that page meant when using those terms.

7. In 2016, you issued an order in a case called *Wilson v. Delgado* dealing with the division of frozen pre-embryos between a divorced couple. Those pre-embryos had been created during the in vitro fertilization process using the husband’s sperm and eggs from a third party who was not the wife. In awarding the pre-embryos to the husband, you wrote, “[t]he Court simply has no other option but to uphold the Defendant’s Constitutional right to decide whether or not he will procreate and under what conditions. If the Court were to award [wife] the pre-embryos, the Court would effectively deprive [husband] of his choice whether or not to become the father of these potential children. [Wife’s] interest in having children that are genetically similar to her twins, while understandable and admirable, is not a constitutionally-protected interest and must yield to [husband’s] Constitutional right not to be forced into parenthood.”

- a. Does the “constitutional right to decide whether or not [one] will procreate and under what conditions” apply equally to women?**

This quotation from my opinion was limited to the specific case before me and was based on United States Supreme Court precedent as well as persuasive authority from Tennessee and Washington state. It was not meant to be and should not be considered as some sort of a blanket statement covering a broad spectrum of factual scenarios. Further, as a nominee to the District Court, it would not be appropriate for me to express an opinion as to an issue that I may ultimately have to decide.

However, just as I did in this case, I would follow all relevant and applicable precedent relating to the Constitutional right to procreate and not procreate as set forth by the United States Supreme Court and United States Court of Appeals for the Eleventh Circuit.

- b. How does the “constitutional right to decide whether or not [one] will procreate and under what conditions” apply in the context of laws limiting access to contraception or abortion?**

As a nominee to the District Court, it would not be appropriate for me to express an opinion as to an issue that I may ultimately have to decide.

8. In 2001, when you were in private practice, you represented a defendant named Thomas Union, a restaurant manager accused of sexually assaulting a female employee. During the trial, the defense team presented evidence that, according to a media report, “emphasized the waitress’ short skirt, flirtatious behavior and ‘free spirit’ attitude that was allegedly brought on by alcohol.” (Debbie Rhyne, Union Acquitted on Sexual Assault Charge, The Macon Telegraph, August 25, 2001)

a. Is the presentation of this sort of evidence permissible under Georgia law?

The media report referred to actually quotes the prosecution’s opinion of the defense case. I vigorously disagree with this gross and intentional mischaracterization offered by the State.

Our defense centered on the element of consent and the jury ultimately found the couple to have engaged in consensual sexual conduct. The trial judge ruled on several motions in limine both before trial and during trial and specifically allowed certain testimony into evidence.

b. As a general matter, do you think what an individual wore is probative of whether s/he consented to sex?

As a nominee to the District Court, it would not be appropriate for me to express an opinion as to an issue that I may ultimately have to decide.

c. What is your understanding of the admissibility of such evidence under federal law?

As a nominee to the District Court, it would not be appropriate for me to express an opinion as to an issue that I may ultimately have to decide. If confirmed, I will follow Federal Rule of Evidence 412 and all applicable United States Supreme Court and United States Court of Appeals for the Eleventh Circuit precedent.

d. If you are confirmed, how will you approach the admissibility of such evidence?

I will follow Federal Rule of Evidence 412 and all applicable United States Supreme Court and United States Court of Appeals for the Eleventh Circuit precedent. Further, I will insure that all witnesses, specifically those alleged to be victims of sexual assault, are treated with the utmost dignity and respect.

9. Please explain your view of the appropriate temperament of a judge. Do you believe you have the appropriate temperament to be a judge?

Over the last 11 years, I have learned a great deal about the proper judicial temperament. As important, during my tenure as a commissioner on the Georgia Judicial Qualifications Commission (the body that regulates judges in Georgia), I learned much about how a judge should not act on the bench. I believe that a judge must take any and all steps necessary to insure that all persons appearing before the court -- lawyers, staff and laypersons alike -- are treated with dignity, respect, patience and courtesy. I believe that judges should always keep in mind that the witnesses, jurors and parties are likely nervous about being in court and almost always unfamiliar with court procedures. As such, a good judge must be understanding and empathetic. I believe that judges must listen to people, not just hear them.

When dealing with lawyers, I believe that judges should recall what it was like when they practiced law. They should return phone calls and correspondence timely and be kind to lawyers and their staff. A good judge will allow lawyers to zealously and passionately represent their clients, but also control the proceedings with a steady hand to insure the court runs efficiently and effectively. Judges should also make sure that the lawyers do not outwork them and insure that they are prepared for hearings, trials and any conferences. Lastly, judges should model professionalism and insist that lawyers, staff, litigants and witnesses do the same.

I have strived to do all of these for the last 11 years and I will continue to do my best to do so in the future. I am confident that I have the proper judicial temperament.

10. District court judges often say that the most difficult aspect of their job is sentencing defendants. Judges also comment that one of the most complicated legal areas are decisions involving the United States Sentencing Guidelines. How do you plan to

familiarize yourself with the Guidelines, and, more importantly, how do you plan to prepare yourself to sentence criminal defendants?

I plan to draw on the 10 years that I sat as trial judge in the Macon Judicial Circuit. During that tenure, I sentenced hundreds, if not thousands, of defendants for offenses ranging from speeding tickets to murder. Additionally, I will study the sentencing guidelines and seek advice from the other judges in my district in order that I am fully prepared.

11. Before serving as a judge, you served as the General Counsel to the Bibb County Republican Party from 1998 to 2002. You served as the Bibb County Chairman for Governor Sonny Perdue's campaign in 2002. You noted in a 2008 interview that you served as a county chairman for President George W. Bush's campaign in 2004. In short – before becoming a judge, you were strongly identified with the Republican Party.

a. What assurances or evidence can you give the Committee and future litigants who come before you that you will be fair and impartial to everyone who appears before you, if confirmed?

Since 2005, I have not been involved with any political campaigns, other than my nonpartisan campaign for superior court judge. Since my successful election, I have insured that I strictly followed the law and applied it as equally as I could to all persons, regardless of personal characteristics, including political viewpoints and party affiliation. Over the course of my judicial career, I have done my best to engender confidence in our judicial system by making sure that all persons before the court are treated fairly, with compassion, courtesy, patience, dignity and respect. I will continue to do so in the future.

b. In particular, what assurances or evidence can you give the Committee and future litigants that you will be fair and impartial to those who appear before you, even when they do not share your personal political views?

See my response to 11(a) above.

12. At your swearing-in ceremony in 2016, you thanked Georgia Governor Nathan Deal for appointing you to the Georgia Court of Appeals, and stated that Governor Deal's "legacy as Governor will be your reshaping of our judicial branch."

a. In what way has Governor Deal reshaped the judicial branch in Georgia?

When I made that remark, I was referring to the fact that at that time, he had appointed four of the nine Justices on the Georgia Supreme Court, 10 of the 15 Judges on the Georgia Court of Appeals and almost 40% of the 213 superior court judges. Additionally, under Gov. Deal's watch, the Georgia Supreme Court expanded from seven to nine justices and the Georgia Court of Appeals expanded from 12 to 15 judges.

b. In what way did your appointment to the Georgia Court of Appeals serve to further this “reshaping” of the state judiciary?

As explained above, I was referring to the number of judicial appointments that Gov. Deal had made to Georgia’s judicial branch. In that context, I was simply one of the 10 judges that Gov. Deal had appointed to the Georgia Court of Appeals at that point in his tenure.

13. You helped create the Macon Judicial Circuit Veterans’ Court. What lessons from your experience with this veterans’ court would you take with you to the federal bench, if you are confirmed?

As I testified at the committee hearing, creating the Veterans Court is by far my best accomplishment during my tenure as a judge. This Court allowed me to set up a system that finally addressed these veterans’ root issues, most often drug addiction, mental health needs such as PTSD or a combination of the two. Of course, as a veteran, I was particularly aware of the unique needs of veterans as they returned from combat zones and tried to reintegrate into their families and civilian society. The Veterans Court literally saved lives, restored families and resurrected hope in these veterans. It gave them the tools they needed to break the cycle that repeatedly landed them in the criminal justice system and saved our county and state thousands of dollars. This program taught me that all persons have redeeming value, even those who are in jail or who may be forced to serve a prison sentence for their crimes. These accountability courts have saved Georgians more than \$250 million in reduced prison costs. However, the lives that have been saved and families that have been reunited are the most important successes of this court. It is far more rewarding to watch veterans graduate with their renewed outlook on life than simply sentencing them to prison or jail where, without treatment, they are almost certain to reoffend.

I will certainly look to employ these types of programs, where appropriate and authorized by Congress, to any veterans that may appear before me in federal court.

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

I received these questions on October 11, 2017. I reviewed the questions, conducted research, and drafted answers. I then shared the answers with the Department of Justice’s Office of Legal Policy (“OLP”). After speaking with attorneys in OLP, I made revisions, finalized my responses, and authorized OLP to submit my responses.

**Nomination of Tilman Self, III to the
United States District Court for the
Middle District of Georgia
Questions for the Record
Submitted October 11, 2017**

QUESTIONS FROM SENATOR WHITEHOUSE

1. During his confirmation hearing, Chief Justice Roberts likened the judicial role to that of a baseball umpire, saying “[m]y job is to call balls and strikes and not to pitch or bat.”
 - a. Do you agree with Justice Roberts’ metaphor? Why or why not?

As a former baseball umpire and a current NCAA football official, I absolutely agree with the metaphor. Judges, like umpires, shouldn’t decide which team they want to win or in any way help out one side over the other. They are simply there to insure that each side plays by the rules of the game and that the rules are fairly applied to each side.

- b. What role, if any, should the practical consequences of a particular ruling play in a judge’s rendering of a decision?

Judges must dutifully follow the law and they cannot be concerned with the consequences of the ruling. The policy-making legislative branch is best-suited to make those sort of decisions.

- c. Federal Rule of Civil Procedure 56 provides that a court “shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact” in a case. Do you agree that determining whether there is a “genuine dispute as to any material fact” in a case requires a judge to make a subjective determination?

I do not. Relevant case law and precedent make it clear that subjective determinations must be decided by a jury, not a judge. Thus, in those situations, the judge must send the case to the jury.

2. During Justice Sotomayor’s confirmation proceedings, President Obama expressed his view that a judge benefits from having a sense of empathy, for instance “to recognize what it’s like to be a young teenage mom, the empathy to understand what it’s like to be poor or African-American or gay or disabled or old.”

- a. What role, if any, should empathy play in a judge’s decision-making process?

Generally speaking, empathy should not enter into a judge’s decision-making process. Judges are required to base their decisions on neutral law that is evenly applied to all persons as opposed to a litigant’s particular characteristics or experiences.

- b. What role, if any, should a judge’s personal life experience play in his or her decision-making process?

A judge’s personal life, beliefs and experience cannot enter into his or her decision-making process. However, I firmly believe that my life experiences

will most definitely affect how I treat litigants, lawyers and staff that appear before the court. I was fortunate to have been raised in a family that emphasized treating all persons with equal dignity and respect and to be compassionate and patient. These experiences have certainly affected how I treat people within the judicial system and I will do my best to make sure that I continue to do so.

- c. Do you believe you can empathize with “a young teenage mom,” or understand what it is like to be “poor or African-American or gay or disabled or old”? If so, which life experiences lead you to that sense of empathy? Will you bring those life experiences to bear in exercising your judicial role?

I will never be able to know what it is like to be anyone other than me. However, I have had several life experiences that have allowed me to learn to see things from another’s perspective. My experience with people much different than me in the United States Army, law school, law practice and the bench have reinforced my belief that all persons have value and are entitled to dignified, respectful, courteous and equal treatment.

3. You did great work starting the Veterans’ Treatment Court, which focuses on rehabilitation of those who commit crimes. How will this experience influence your sentencing practices as a federal district judge? Will you implement the same focus on rehabilitation in the criminal setting?

Thank you very much for those kind words. Beginning the Veterans Court will always be the highlight of my judicial career.

Veterans Court has reinforced my belief that all people have redeeming value, even those sentenced to jail or prison. I have seen the crippling effects of addiction and the incredibly hard work it takes to recover. Through Veterans Court, I have seen lives saved and families restored. I have seen veterans leave our program with their heads once again held high and their self esteem replenished. Given the way that this program has affected me personally, I would absolutely take advantage of any statute that Congress passed that would grant me this sort of opportunity on the federal level. If there is a way to address the root cause of one’s involvement with the criminal justice system, I believe that is always the most preferable route as it has the best chance to prevent a subsequent offense. I will also pledge to look into the possibility of partnering with our local state accountability courts, if possible, to determine if there are ways to allow any federal defendant to take advantage of these sort of services, whether it be pre-trial or post conviction.

**Nomination of Tilman Eugene Self III, to be United States District Judge
for the Middle District of Georgia
Questions for the Record
Submitted October 11, 2017**

QUESTIONS FROM SENATOR COONS

1. With respect to substantive due process, what factors do you look to when a case requires you to determine whether a right is fundamental and protected under the Fourteenth Amendment?

As with any issue, I will dutifully follow any relevant and applicable United States Supreme Court precedent and precedent from the United States Court of Appeals for the Eleventh Circuit. Specifically, I will look to the factors identified by the Supreme Court and Eleventh Circuit cases and follow them in any substantive due process case.

- a. Would you consider whether the right is expressly enumerated in the Constitution?

Please see my response to Question 1 above.

- b. Would you consider whether the right is deeply rooted in this nation's history and tradition? If so, what types of sources would you consult to determine whether a right is deeply rooted in this nation's history and tradition?

Please see my response to Question 1 above.

- c. Would you consider whether the right has previously been recognized by Supreme Court or circuit precedent? What about the precedent of a court of appeals outside your circuit?

Please see my response to Question 1 above.

- d. Would you consider whether a similar right has previously been recognized by Supreme Court or circuit precedent? What about whether a similar right has previously been recognized by a court of appeals outside your circuit?

Please see my response to Question 1 above.

- e. Would you consider whether the right is central to "the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life"? See *Planned Parenthood v. Casey*, 505 U.S. 833, 581 (1992); *Lawrence v. Texas*, 539 U.S. 558, 574 (2003) (quoting *Casey*).

Please see my response to Question 1 above.

- f. What other factors would you consider?

Please see my response to Question 1 above.

2. Does the Fourteenth Amendment's promise of "equal protection" guarantee equality across race and gender, or does it only require racial equality?

The United States Supreme Court has held that the Fourteenth Amendment applies to several classifications in addition to race. As a district court judge, I would follow all United States Supreme Court and Eleventh Circuit precedent related to any category of case that involved the Fourteenth Amendment.

- a. If you conclude that it does require gender equality under the law, how do you respond to the argument that the Fourteenth Amendment was passed to address certain forms of racial inequality during Reconstruction, and thus was not intended to create a new protection against gender discrimination?

Please see my response to Question 2 above.

- b. If you conclude that the Fourteenth Amendment has always required equal treatment of men and women, as some originalists contend, why was it not until 1996, in *United States v. Virginia*, 518 U.S. 515 (1996), that states were required to provide the same educational opportunities to men and women?

Please see my response to Question 2 above.

- c. Does the Fourteenth Amendment require that states treat gay and lesbian couples the same as heterosexual couples? Why or why not?

Please see my response to Question 2 above.

- d. Does the Fourteenth Amendment require that states treat transgender people the same as those who are not transgender? Why or why not?

Please see my response to Question 2 above.

3. The Supreme Court has decided several key cases addressing the scope of the right to privacy under the Constitution.
 - a. Do you agree that there is a constitutional right to privacy that protects a woman's right to use contraceptives?

The United States Supreme Court has determined that such a right exists. As a district court judge, I would follow any and all relevant precedent of the United States Supreme Court and the Eleventh Circuit regarding this right.

- b. Do you agree that there is a constitutional right to privacy that protects a woman's right to obtain an abortion?

The United States Supreme Court has determined that such a right exists. As a district court judge, I would follow any and all relevant precedent of the United States Supreme Court and the Eleventh Circuit regarding this right.

- c. Do you agree that there is a constitutional right to privacy that protects intimate relations between two consenting adults, regardless of their sexes or genders?

The United States Supreme Court has determined that such a right exists. As a district court judge, I would follow any and all relevant precedent of the United States Supreme Court and the Eleventh Circuit regarding this right.

- d. If you do not agree with any of the above, please explain whether these rights are protected or not and which constitutional rights or provisions encompass them.

Please see my responses above.

4. In *United States v. Virginia*, 518 U.S. 515, 536 (1996), the Court explained that in 1839, when the Virginia Military Institute was established, "Higher education at the time was considered dangerous for women," a view widely rejected today. In *Obergefell v. Hodges*, 135 S. Ct. 2584, 2600-01 (2013), the Court reasoned, "As all parties agree, many same-sex couples provide loving and nurturing homes to their children, whether biological or adopted. And hundreds of thousands of children are presently being raised by such couples. . . . Excluding same-sex couples from marriage thus conflicts with a central premise of the right to marry. Without the recognition, stability, and predictability marriage offers, their children suffer the stigma of knowing their families are somehow lesser." This conclusion rejects arguments made by campaigns to prohibit same-sex marriage based on the purported negative impact of such marriages on children.
- a. When is it appropriate to consider evidence that sheds light on our changing understanding of society?

As our society becomes more complicated and complex, judges will necessarily be required to apply settled Constitutional principles to new and different situations. Courts should use the applicable rules of evidence and consider properly admitted evidence in considering these novel factual scenarios.

- b. What is the role of sociology, scientific evidence, and data in judicial analysis?

I have not had an occasion to fully consider the full import of the question. However, I believe if any such evidence were properly admitted, judges could use it in answering the particular question at hand, provided that United States Supreme Court and Eleventh Circuit precedent allowed the evidence to be considered.

5. You are a member of the Federalist Society, a group whose members often advocate an "originalist" interpretation of the Constitution.

- a. In his opinion for the unanimous Court in *Brown v. Board of Education*, 347 U.S. 483 (1954), Chief Justice Warren wrote that although the “circumstances surrounding the adoption of the Fourteenth Amendment in 1868 . . . cast some light” on the amendment’s original meaning, “it is not enough to resolve the problem with which we are faced. At best, they are inconclusive We must consider public education in the light of its full development and its present place in American life throughout the Nation. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws.” 347 U.S. at 489, 490-93. Do you consider *Brown* to be consistent with originalism even though the Court in *Brown* explicitly rejected the notion that the original meaning of the Fourteenth Amendment was dispositive or even conclusively supportive?

Although I have not specifically studied this particular question, I am aware that some scholars are split on the issue.

- b. How do you respond to the criticism of originalism that terms like “‘the freedom of speech,’ ‘equal protection,’ and ‘due process of law’ are not precise or self-defining”? Robert Post & Reva Siegel, *Democratic Constitutionalism*, National Constitution Center, <https://constitutioncenter.org/interactive-constitution/white-pages/democratic-constitutionalism> (last visited October 11, 2017).

In my opinion, very few terms in the Constitution are “precise” or “self-defining.” Fortunately, the United States Supreme Court and Eleventh Circuit have already provided clear interpretations to many issues. As a district court judge, I would follow those precedents in answering the particular case under consideration.

6. In *State v. Jolly*, No. 08-CR-63815 (TES), 2009 WL 6608746 (Ga. Super. Sept. 28, 2009), you upheld a statute imposing the death penalty on a defendant convicted of killing a police officer even when the defendant did not realize the victim was a police officer. Part of the challenge to the statute was an equal protection claim.

- a. Why did you use the rational basis standard in this case even though the defendant and the State agreed that strict scrutiny was proper?

In the *Jolly* case, the State and defendant agreed that strict scrutiny was the correct level of scrutiny to apply to the defendant's equal protection claim because they alleged that a fundamental right was implicated, i.e., the right to life. Although there was no Georgia Supreme Court precedent directly on point, I looked at similar laws from other states and ultimately ruled that the fundamental right to life was not implicated in this particular equal protection challenge so that it would not be appropriate to apply a strict-scrutiny analysis. Accordingly, the only standard left to be applied after that ruling was rational basis. The Georgia Supreme Court affirmed that decision.

- b. You also determined that post-conviction, the defendant's ability to raise an equal protection challenge was limited. At what stage is it appropriate to raise an equal protection claim challenging the statute based on an alleged deprivation of the right to life?

As a District Court nominee, it would be inappropriate for me to express any sort of an opinion as to an issue that I may ultimately be called on to decide.