Senator Lindsey Graham, Ranking Member
Questions for the Record
Mr. Jerry Edwards, Jr.
Nominee to be a United States District Judge for the Western District of Louisiana

1. **Please explain whether you agree or disagree with the following statement: "The judgments about the Constitution are value judgments. Judges exercise their own independent value judgments. You reach the answer that essentially your values tell you to reach."**

   Response: Any judgment that I make about the Constitution will be based on the applicable Supreme Court and Fifth Circuit precedent as applied to the facts of the case. Any personal values that I may have would have no role in the constitutional analysis I will conduct in a case. While I am unfamiliar with the context of the quoted statement, I respectfully disagree with it to the extent it is inconsistent with the foregoing.

2. **When asked why he wrote opinions that he knew the Supreme Court would reverse, Judge Stephen Reinhardt's stock response was, "They can't catch 'em all." Is this an appropriate approach for a federal judge to take?**

   Response: The appropriate approach for a federal district judge in every case is to scrupulously follow binding precedent and apply it to the facts of each case. I am committed to following this approach should I be confirmed.

3. **Please define the term "living constitution."**

   Response: "A constitution whose interpretation and application can vary over time according to changing circumstances and changing social values." Black's Law Dictionary, (11th ed. 2019).

4. **Do you agree with then-Judge Ketanji Brown Jackson when she said in 2013 that she did not believe in a "living constitution"?**

   Response: I am unfamiliar with this statement and its context. However, as the Supreme Court recently observed, "[a]lthough its meaning is fixed according to the understandings of those who ratified it, the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated." *New York State Rifle & Pistol Association, Inc. v. Bruen,* 142 S.Ct. 2111, 2132 (2022). If I am confirmed, I will faithfully apply the analytical framework set forth by the Supreme Court and the Fifth Circuit in each case that raises a constitutional issue.

5. **Under Supreme Court and Fifth Circuit precedent, what is a "fact" and what sources do courts consider in determining whether something is a question of fact or a question of law?**

Response: I am unaware of Supreme Court or Fifth Circuit precedent directly on this point; however, Black's Law Dictionary defines a fact as "something that actually exists; an aspect of reality." Black's Law Dictionary, (11th ed. 2019). Further, the Supreme Court recently observed that a determination of the proper standard of review of a district, bankruptcy or agency decision on a mixed question of law and fact may turn on whether the question presented requires the court to expound on the law, or immerse the court in factual issues. *Guererro-Lasprilla v. Barr,* 140 S.Ct. 1062, 1069 (2020). If confronted with this issue if I am confirmed, I will closely study and apply Supreme Court and Fifth Circuit precedent.

6. **How do you distinguish between "attacks" on a sitting judge and mere criticism of an opinion he or she has issued?**

   Response: All people have the constitutionally protected right of free speech guaranteed by the First Amendment; however, that right is not absolute. *See* 18 U.S.C. § 1507 (regarding picketing or parading); *Virginia v. Black,* 123 S.Ct. 1536, 1547 (2003). (discussing the permissibility of regulating fighting words, true threats and words that incite "imminent lawless action.") *Id.* If I am confronted with this issue in a case before me, I will study the law to determine the applicable precedent and apply it to the facts of the case.

7. **Which of the four primary purposes sentencing—retribution, deterrence, incapacitation, and rehabilitation—do you personally believe is the most important? Which of these principles, if confirmed, will guide your approach to sentencing defendants?**

   Response: If I am confirmed, I will apply the sentencing factors set forth in 18 U.S.C. 3553(a). These factors require the Court to weigh multiple factors all of which are designed to guide the Court to impose the appropriate sentence for each case while ensuring that it is sufficient but not greater than necessary. 18 U.S.C. 3553(a) does not provide that any one factor is more important than another.

8. **Please identify a Supreme Court decision from the last 50 years that is a typical example of your judicial philosophy and explain why.**

   Response: As a district court judge, my judicial philosophy will be to approach every case with an open mind and to render decisions that reflect a thorough understanding of the law and facts and clearly articulate the basis for each ruling. I am unaware of a particular Supreme Court decision that reflects this approach.

9. **Please identify a Fifth Circuit judicial opinion from the last 50 years that is a typical example of your judicial philosophy and explain why.**

Response: As a district court judge, my judicial philosophy will be to approach every case with an open mind and to render decisions that reflect a thorough understanding of the law and facts and clearly articulate the basis for each ruling. I am unaware of a particular Fifth Circuit opinion that reflects this approach.

10. **Please explain your understanding of 18 USC § 1507 and what conduct it prohibits.**

    Response: This statute prohibits a person from picketing, parading, demonstrating or using a sound-truck or similar device, with the intent to interfere with, obstruct or impede, the administration of justice or to influence a judge, juror, witness or court officer in performing their duties.

11. **Under Supreme Court precedent, is 18 USC § 1507, or a state statute modeled on § 1507, constitutional on its face?**

    Response: I am unaware of any Supreme Court precedent that has held that 18 U.S.C. § 1507 is constitutional on its face. However, the Supreme Court has held that a statute in Louisiana modeled on 18 U.S.C. § 1507 was constitutionally valid on its face. *Cox v. State of Louisiana,* 85 S.Ct. 476, 481 (1965).

12. **What is the operative standard for determining whether a statement is not protected speech under the "fighting words" doctrine?**

    Response: The Supreme Court has held that fighting words are "those personally abusive epithets which, when addressed to the ordinary citizen, are, as a matter of common knowledge, inherently likely to provoke violent reaction." *Virginia v. Black,* 123 S.Ct. 1536, 1547 (2003); *see also* Michael Mannheimer, *The Fighting Words Doctrine,* 93 Colum.L.Rev. 1527, 1528 (1993), citing *Cohen v. California*, 91 S.Ct. 1780, 1785 (1971).

13. **What is the operative standard for determining whether a statement is not protected speech under the true threats doctrine?**

    Response: "'True threats' encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals." *Virginia v. Black,* 123 S.Ct. 1536, 1548 (2003). Several factors should be considered to determine whether a statement is protected speech: 1) whether the statement is political hyperbole; 2) the overall context in which the statement is made; 3) the reaction of the listeners; and 4) whether the statement was conditional, especially if it was conditioned on an event that was unlikely to occur. Jennifer Rothman, *Freedom of Speech and True Threats*, 25 Harv. J.L. & Pub. Pol'y 283, 295 (2001); *see also Watts v. United States*, 89 S.Ct. 1399 (1969).

14. **Please answer the following questions yes or no. If you would like to include an additional narrative response, you may do so, but only after a yes or no answer:**

    a. **Was *Brown v. Board of Education* correctly decided?**
    b. **Was *Loving v. Virginia* correctly decided?**
    c. **Was *Griswold v. Connecticut* correctly decided?**
    d. **Was *Roe v. Wade* correctly decided?**
    e. **Was *Planned Parenthood v. Casey* correctly decided?**
    f. **Was *Gonzales v. Carhart* correctly decided?**
    g. **Was *District of Columbia v. Heller* correctly decided?**
    h. **Was *McDonald v. City of Chicago* correctly decided?**
    i. **Was *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* correctly decided?**
    j. **Was *New York State Rifle & Pistol Association v. Bruen* correctly decided?**
    k. **Was *Dobbs v. Jackson Women's Health* correctly decided?**

    Response: This is a combined response to subparts (a) though (k). Some Supreme Court precedent remains the subject of active litigation. This reality makes it inappropriate for me to comment on the merits of such precedent in light of Canon 3(A)(6) of the Code of Conduct for United States Judges which provides that it is improper to comment on the merits of any case that is pending or impending in any court. Further, any comments could be construed as a prejudgment of the issues implicated by such precedent, which would not comport with the Judicial Code of Conduct. If I am confirmed, I will follow all Supreme Court and Fifth Circuit precedent in each case listed above, except for *Roe v. Wade* and *Planned Parenthood v. Casey,* which were overturned by *Dobbs v. Jackson Women's Health*.

    Notwithstanding the foregoing, *Brown* and *Loving* represent Supreme Court precedent that is not likely to be challenged in subsequent litigation. This precedent does not implicate Canon 3(A)(6) and therefore I believe it permissible for me to say that these cases were correctly decided.

15. **What legal standard would you apply in evaluating whether or not a regulation or statutory provision infringes on Second Amendment rights?**

    Response: I would apply the standard recently articulated by the United States Supreme Court: "When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation. Only then may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.'" *New York State Rifle & Pistol Association, Inc. v. Bruen,* 142 S.Ct. 2111, 2129-2130 (2022).

16. **Demand Justice is a progressive organization dedicated to "restor[ing] ideological balance and legitimacy to our nation's courts."**
    a. **Has anyone associated with Demand Justice requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

       Response: No.

    b. **Are you currently in contact with anyone associated with Demand Justice, including, but not limited to: Brian Fallon, Christopher Kang, Tamara Brummer, Katie O'Connor, Jen Dansereau, Faiz Shakir, and/or Stasha Rhodes?**

       Response: No.

    c. **Have you ever been in contact with anyone associated with Demand Justice, including, but not limited to: Brian Fallon, Christopher Kang, Tamara Brummer, Katie O'Connor, Jen Dansereau, Faiz Shakir, and/or Stasha Rhodes?**

       Response: No.

17. **The Alliance for Justice is a "national association of over 120 organizations, representing a broad array of groups committed to progressive values and the creation of an equitable, just, and free society."**
    a. **Has anyone associated with Alliance for Justice requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

       Response: No.

    b. **Are you currently in contact with anyone associated with the Alliance for Justice, including, but not limited to: Rakim Brooks and/or Daniel L. Goldberg?**

       Response: No.

    c. **Have you ever been in contact with anyone associated with Demand Justice, including, but not limited to: Rakim Brooks and/or Daniel L. Goldberg?**

       Response: No.

18. **Arabella Advisors is a progressive organization founded "to provide strategic guidance for effective philanthropy" that has evolved into a "mission-driven, Certified B Corporation" to "increase their philanthropic impact."**
    a. **Has anyone associated with Arabella Advisors requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

       Response: No.

    b. **Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund.**

       Response: No.

    c. **Are you currently in contact with anyone associated with Arabella Advisors? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.**

       Response: No.

    d. **Have you ever been in contact with anyone associated with Arabella Advisors? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.**

       Response: No.

19. **The Open Society Foundations is a progressive organization that "work[s] to build vibrant and inclusive democracies whose governments are accountable to their citizens."**
    a. **Has anyone associated with Open Society Fund requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

       Response: No.

    b. **Are you currently in contact with anyone associated with the Open Society Foundations?**

       Response: No.

c. **Have you ever been in contact with anyone associated with the Open Society Foundations?**

Response: No.

20. **Fix the Court is a "non-partisan, 501(C)(3) organization that advocates for non-ideological 'fixes' that would make the federal courts, and primarily the U.S. Supreme Court, more open and more accountable to the American people."**
    a. **Has anyone associated with Fix the Court requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

    Response: No.

    b. **Are you currently in contact with anyone associated with Fix the Court, including but not limited to: Gabe Roth, Tyler Cooper, Dylan Hosmer-Quint and/or Mackenzie Long?**

    Response: No.

    c. **Have you ever been in contact with anyone associated with Fix the Court, including but not limited to: Gabe Roth, Tyler Cooper, Dylan Hosmer-Quint and/or Mackenzie Long?**

    Response: No.

21. **Please describe the selection process that led to your nomination to be a United States District Judge, from beginning to end (including the circumstances that led to your nomination and the interviews in which you participated).**

    Response: On March 1, 2023, I was contacted by Senator Bill Cassidy's office inquiring if I would be interested in serving as a federal district judge, and I responded that I would. On March 2, 2023, I was contacted by Senator John Kennedy's office and I expressed my interest in serving as a federal district judge. On or around March 6, 2023, I was contacted by Senator Cassidy's office informing me that the White House Counsel's Office would contact me to schedule an interview. I was interviewed by attorneys from the White House Counsel's Office on March 8, 2023. I interviewed with Senators Cassidy and Kennedy on March 15, 2023. On March 17, 2023, I was contacted by the White House Counsel's Office and the Office of Legal Policy at the Department of Justice regarding the vetting process. Since that time, I have been in contact with officials from the Office of Legal Policy. On June 7, 2023, the President announced his intent to nominate me.

22. **During your selection process did you talk with any officials from or anyone directly associated with the organization Demand Justice, or did anyone do so on your behalf? If so, what was the nature of those discussions?**

    Response: No.

23. **During your selection process did you talk with any officials from or anyone directly associated with the American Constitution Society, or did anyone do so on your behalf?? If so, what was the nature of those discussions?**

    Response: No.

24. **During your selection process, did you talk with any officials from or anyone directly associated with Arabella Advisors, or did anyone do so on your behalf? If so, what was the nature of those discussions? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.**

    Response: No.

25. **During your selection process did you talk with any officials from or anyone directly associated with the Open Society Foundations, or did anyone do so on your behalf? If so, what was the nature of those discussions?**

    Response: No.

26. **During your selection process did you talk with any officials from or anyone directly associated with Fix the Court, or did anyone do so on your behalf? If so, what was the nature of those discussions?**

    Response: No.

27. **Since you were first approached about the possibility of being nominated, did anyone associated with the Biden administration or Senate Democrats give you advice about which cases to list on your committee questionnaire?**
    a. **If yes,**
        i. **Who?**
        ii. **What advice did they give?**
        iii. **Did they suggest that you omit any cases?**

    Response: No.

28. **List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding your nomination.**

Response: On March 1, 2023, I was contacted by Senator Bill Cassidy's office inquiring if I would be interested in serving as a federal district judge, and I responded that I would. On March 2, 2023, I was contacted by Senator John Kennedy's office and I expressed my interest in serving as a federal district judge. On or around March 6, 2023, I was contacted by Senator Cassidy's office informing me that the White House Counsel's Office would contact me to schedule an interview. I was interviewed by attorneys from the White House Counsel's Office on March 8, 2023. I interviewed with Senators Cassidy and Kennedy on March 15, 2023. On March 17, 2023, I was contacted by the White House Counsel's Office and the Office of Legal Policy at the Department of Justice regarding the vetting process. Since that time, I have been in contact with officials from the Office of Legal Policy. On June 7, 2023, the President announced his intent to nominate me.

29. **Please explain, with particularity, the process whereby you answered these questions.**

Response: I drafted responses to each question as I went through them using the notes I created in preparation for the hearing before the Senate Judiciary Committee, which included notes on questions asked in prior hearings and notes from cases I reviewed in preparation for the hearing. I researched Westlaw if an answer could not be extrapolated from my notes. I received limited feedback from the Office of Legal Policy with the Department of Justice and then finalized my answers.

Senate Judiciary Committee
Nominations Hearing
July 12, 2023
Questions for the Record
Senator Amy Klobuchar

For Jerry Edwards Jr., nominee to be United States District Court Judge for the Western District of Louisiana

Since 2019, you have served in the U.S. Attorney's Office of the Western District of Louisiana and served as Chief of the Civil Division for two years. During your tenure as an Assistant U.S. Attorney you supervised lawyers in the Appellate, Criminal, and Civil divisions, and tried nine cases to verdict.

- **How will these experiences inform your approach if you are confirmed as a federal district court judge?**

Response: My various roles in the U.S. Attorney's Office have given me a broad base of knowledge that will assist me in deciding civil and criminal matters fairly and efficiently. I was primarily a civil litigator when I joined the U.S. Attorney's Office but serving as Chief of the Civil Division gave me great insight into the myriad of civil matters that involve the federal government. I have also gained substantial knowledge in criminal law and procedure during my time in the U.S. Attorney's Office through my role as the First Assistant U.S. Attorney. As the First Assistant, I supervise the Criminal and Appellate Divisions of our office and have been involved with the entire criminal process from investigation, indictment, discovery, pre-trial motions, trial strategy, sentencing and appeals. The knowledge I have gained in the U.S. Attorney's Office has given me an awareness for potential pre-trial, trial and appellate issues.

Senator Mike Lee
Questions for the Record
Jerry Edwards Jr., Nominee to the United States District Court for the Western District of Louisiana

1. **How would you describe your judicial philosophy?**

   Response: I am committed to approaching each case with an open mind. I will thoroughly study the law and facts of each case and clearly articulate the basis for each ruling.

2. **What sources would you consult when deciding a case that turned on the interpretation of a federal statute?**

   Response: I would first determine whether there is binding precedent from the Supreme Court and Fifth Circuit Court of Appeals on the interpretation of the statute and if so, apply that interpretation to the facts of the case. If there were no binding precedent and the statutory text was unambiguous, I would apply its plain meaning. If the text was ambiguous, I would apply the applicable canons of statutory construction to determine its meaning. In the absence of binding precedent, I would also review cases from other courts that have interpreted the statute for persuasive authority.

3. **What sources would you consult when deciding a case that turned on the interpretation of a constitutional provision?**

   Response: I would first determine if there is binding Supreme Court and Fifth Circuit precedent on the constitutional provision and apply the precedent to the facts of the case. In the absence of binding precedent, I would apply the framework of scrutiny on the constitutional provision as set forth by the Supreme Court and Fifth Circuit in similar cases.

4. **What role do the text and original meaning of a constitutional provision play when interpreting the Constitution?**

   Response: As recently set forth by the United States Supreme Court in *New York State Rifle & Pistol Association, Inc. v. Bruen,* 142 S.Ct. 2111 (2022) the text and original meaning of a constitutional provision are important to determining the meaning of the constitutional provision as applied to the facts of a current case. "Although its meaning is fixed according to the understandings of those who ratified it, the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated." *Id.* at 2132.

5. **How would you describe your approach to reading statutes? Specifically, how much weight do you give to the plain meaning of the text?**

Response: I first read the statute and if its meaning is clear and unambiguous, apply it to the facts of the case. If the meaning of the statute is unclear, I would approach the statute in the manner set forth in my answer to Question #2.

a. Does the "plain meaning" of a statute or constitutional provision refer to the public understanding of the relevant language at the time of enactment, or does the meaning change as social norms and linguistic conventions evolve?

Response: The Supreme Court has approached the determination of the plain meaning by ascertaining the public understanding of the relevant language at the time it was enacted. See *New York State Rifle & Pistol Association, Inc. v. Bruen,* 142 S.Ct. 2111 (2022).

6. What are the constitutional requirements for standing?

Response: A plaintiff must show that they have an injury that is traceable to the conduct of the defendant and redressable by the court to satisfy the constitutional requirements for standing.

7. Do you believe Congress has implied powers beyond those enumerated in the Constitution? If so, what are those implied powers?

Response: The Supreme Court has held that Congress has implied powers that are necessary and proper to executing its powers that are expressly enumerated in the Constitution. See, *M'Culloch v. Maryland*, 17 U.S. 316 (1819).

8. Where Congress enacts a law without reference to a specific Constitutional enumerated power, how would you evaluate the constitutionality of that law?

Response: The Supreme Court has observed that "[t]he question of the constitutionality of action taken by Congress does not depend on recitals of the power which it undertakes to exercise." *National Federation of Independent Business v. Sebelius,* 132 S.Ct. 2566, 2598 (2012). If confronted with such a law, I would approach the constitutional question by employing the level of scrutiny and analysis set forth by the Supreme Court and the Fifth Circuit on the issue presented by the law.

9. Does the Constitution protect rights that are not expressly enumerated in the Constitution? Which rights?

Response: The Supreme Court has held that the Constitution protects certain rights that are not expressly enumerated in the Constitution when those rights are deeply rooted in the Nation's "history and tradition" and "implicit in the concept of ordered liberty." See *Washington v. Glucksberg,* 117 S.Ct. 2258, 2268 (1997). For example, the Supreme Court has recognized the right to marry (*Loving v. Virginia*, 87 S.Ct. 1817 (1967)), the right to direct the education of your children (*Meyer v. Nebraska*,

43 S.Ct. 625 (1923)) and the right to privacy (*Griswold v. Connecticut*, 85 S.Ct. 1678 (1965)).

10. What rights are protected under substantive due process?

Response: The Supreme Court has recognized several rights that are protected under substantive due process including those set forth in my answer to Question 9 and others that the Supreme Court has determined are fundamental based on the standard articulated in *Glucksberg*.

11. If you believe substantive due process protects some personal rights such as a right to abortion, but not economic rights such as those at stake in *Lochner v. New York*, on what basis do you distinguish these types of rights for constitutional purposes?

Response: The Supreme Court has rejected the due process analysis of *Lochner v. New York*. *See Ferguson v. Skrupa,* 83 S.Ct. 1028, 1030-1031 (1963). The test to determine whether rights are protected by the substantive due process clause is whether the asserted rights satisfy the *Glucksberg* test. As a district court judge, I will apply the *Glucksberg* analysis to determine whether the asserted personal or economic rights are protected by substantive due process, if there is no binding precedent on the issue.

12. What are the limits on Congress's power under the Commerce Clause?

Response: The Commerce Clause provides Congress with the power to enact laws to regulate foreign commerce, interstate commerce and commerce with Indian Tribes. Perhaps most litigated is Congress' power to regulate interstate commerce. The Supreme Court has held that Congress may regulate: 1) the channels of interstate commerce; 2) the instrumentalities of interstate commerce; and 3) the activities that substantially affect interstate commerce. *See United States v. Lopez,* 115 S.Ct. 1624, 1629 (1995).

13. What qualifies a particular group as a "suspect class," such that laws affecting that group must survive strict scrutiny?

Response: The Supreme Court has determined that suspect classes include religion, race, alienage and nationality. *See City of New Orleans v. Dukes,* 96 S.Ct. 2513, 2517 (1976); *see also Graham v. Richardson,* 91 S.Ct. 1848, 1852 (1971). Laws affecting groups based on these classifications must survive strict scrutiny. *Graham,* 91 S.Ct. at 1852.

14. How would you describe the role that checks and balances and separation of powers play in the Constitution's structure?

Response: The role of checks and balances and the separation of powers is critical to the understanding how each branch of the federal government works together and

with the state governments. The Constitution sets forth the powers of each branch of the federal government separately, which confirms the independence of each branch, and the Constitution is explicit in the states' reservation of powers.

15. How would you go about deciding a case in which one branch assumed an authority not granted it by the text of the Constitution?

Response: I would have to evaluate the case utilizing the applicable Supreme Court framework for determining whether the exercised authority is constitutional. *See e.g. Youngstown Sheet & Tube Co. v. Sawyer,* 72 S.Ct. 863 (1952) (holding that the President did not have the constitutional power to seize steel plants); *see also Marbury v. Madison,* 5 U.S. 137, 178 (1803) ("It is emphatically the province and duty of the judicial department to say what the law is.")

16. What role should empathy play in a judge's consideration of a case?

Response: The judge's considerations in reaching a conclusion in a case should be based on the evidence and application of the law to the facts.

17. What's worse: Invalidating a law that is, in fact, constitutional, or upholding a law that is, in fact, unconstitutional?

Response: Both outcomes are undesirable.

18. From 1789 to 1857, the Supreme Court exercised its power of judicial review to strike down federal statutes as unconstitutional only twice. Since then, the invalidation of federal statutes by the Supreme Court has become significantly more common. What do you believe accounts for this change? What are the downsides to the aggressive exercise of judicial review? What are the downsides to judicial passivity?

Response: I have not studied this issue to determine the frequency of and bases for the invalidation of federal statutes from 1789 to the present.

19. How would you explain the difference between judicial review and judicial supremacy?

Response: Black's Law Dictionary defines judicial review as "[a] court's power to review the actions of other branches or levels of government" and judicial supremacy as "[t]he doctrine that interpretations of the Constitution by the federal judiciary in the exercise of judicial review, esp. U.S. Supreme Court interpretations, are binding on the coordinate branches of the federal government and the states." Black's Law Dictionary (11th ed. 2019). *See Marbury v. Madison,* 5 U.S. 137, 178 (1803) ("It is emphatically the province and duty of the judicial department to say what the law is.")

20. Abraham Lincoln explained his refusal to honor the Dred Scott decision by asserting that "If the policy of the Government upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the Supreme Court . . . the people will have ceased to be their own rulers, having to that extent practically resigned their Government into the hands of that eminent tribunal." How do you think elected officials should balance their independent obligation to follow the Constitution with the need to respect duly rendered judicial decisions?

Response: Elected officials should respect duly rendered judicial decisions and follow them. *See* Article VI, Clause 3 of the U.S. Constitution; *see also Cooper v. Aaron,* 78 S.Ct. 1401 (1958).

21. In Federalist 78, Hamilton says that the courts are the least dangerous branch because they have neither force nor will, but only judgment. Explain why that's important to keep in mind when judging.

Response: If I am confirmed, it will be important for me as a district court judge to remember that my role is not to make law, or impose my personal view of what the law should be on litigants; instead, my role is limited to applying the law in view of the facts of a particular case.

22. **As a district court judge, you would be bound by both Supreme Court precedent and prior circuit court precedent. What is the duty of a lower court judge when confronted with a case where the precedent in question does not seem to be rooted in constitutional text, history, or tradition and also does not appear to speak directly to the issue at hand? In applying a precedent that has questionable constitutional underpinnings, should a lower court judge extend the precedent to cover new cases, or limit its application where appropriate and reasonably possible?**

Response: As a district court judge, my duty will be to apply legal precedent to the facts of the case before me. It would not be appropriate for the district court to go beyond applicable precedent to conduct its own constitutional analysis to decide a case. If the precedent does not speak directly the issue at hand, I would utilize the constitutional framework employed by the Supreme Court and Fifth Circuit in the most similar case.

23. When sentencing an individual defendant in a criminal case, what role, if any, should the defendant's group identity(ies) (e.g., race, gender, nationality, sexual orientation or gender identity) play in the judges' sentencing analysis?

Response: The Court's sentencing analysis should be limited to the factors set forth in 18 U.S.C. 3553(a). These factors do not include a defendant's group identity as set forth in the question above.

24. The Biden Administration has defined "equity" as: "the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality." Do you agree with that definition? If not, how would you define equity?

Response: I have not studied the meaning of "equity" in this context. However, the first two definitions of equity contained in Black's Law Dictionary are: 1) "fairness; impartiality; evenhanded dealing;" and 2) "[t]he body of principles constituting what is fair and right; natural law." Black's Law Dictionary (11th ed. 2019).

25. Is there a difference between "equity" and "equality?" If so, what is it?

Response: See my answer to Question 24. Black's Law Dictionary defines equality as "[t]he quality, state, or condition of being equal; esp. likeness in power or political status." Black's Law Dictionary (11th ed. 2019).

26. Does the 14th Amendment's equal protection clause guarantee "equity" as defined by the Biden Administration (listed above in question 24)?

Response: I am unaware of Supreme Court or Fifth Circuit precedent addressing equity in this context. It would not be appropriate under the Code of Conduct for United States Judges for me to offer an opinion on whether the scope of the 14th Amendment's equal protection clause guarantees "equity" as set forth in Question 24. Specifically, any opinion offered by me could potentially violate Canon 1, which requires judges to uphold the integrity and independence of the judiciary. Any opinion in the abstract could be construed as pre-judging issues related to this definition that could come before me as a district judge.

27. How do you define "systemic racism?"

Response: Merriam-Webster defines systemic racism as "the oppression of a racial group to the advantage of another as perpetuated by inequity within interconnected systems (such as political, economic, and social systems)." Merriam-Webster's Dictionary (2022).

28. How do you define "critical race theory?"

Response: Black's Law Dictionary defines critical race theory as "[a] reform movement within the legal profession, particularly within academia, whose adherents believe that the legal system has disempowered racial minorities." Black's Law Dictionary (11th ed. 2019).

29. Do you distinguish "critical race theory" from "systemic racism," and if so, how?

Response: See my answers to Questions 27 and 28.

30. For three years, you were listed as the counsel of record in *Smith et al. v. Concordia Parish*, a desegregation case against a local charter school. In multiple filings in this case you argued that blatant racial balancing (i.e. giving lottery preferences based on race or reserving seats for individuals based on their race) is constitutional. Can you explain in more detail the reasoning behind this argument?

Response: From September 2020 to February 2023, I served as co-counsel for the United States of America in *Smith, et al. v. Concordia Parish School Board, et al.,* Docket No. 65-cv-11577 in the Western District of Louisiana.

The Concordia Parish School District has been operating under a desegregation order since 1970. Delta Charter Group, Inc. (a local charter school) intervened in this litigation in September 2012 and entered into a Consent Decree with the other parties in January 2013. One of the agreements between the parties, as reflected in the 2013 Consent Decree, was for the student enrollment at Delta Charter Group, Inc. to reflect the racial demographics of the Concordia Parish School District.

As an employee of the Department of Justice, I am prohibited by Section 1-7 of the Justice Manual from commenting on the parties' arguments as this case is still pending and is currently on appeal to the Fifth Circuit. Further, it would not be appropriate for me to comment in light of Canon 3(A)(6) of the Code of Conduct for United States Judges, which prohibits comments on the merits of pending cases.

31. Would the Supreme Court's recent decision in the *Students for Fair Admission* case have changed the way you handled the *Smith* case as Assistant US attorney?

Response: See my answer to Question 30. Further, the effect of the *Students for Fair Admission* case on the *Smith* case is one of the questions before the Fifth Circuit in the pending appeal.

32. In another school desegregation case, *Thomas v. St. Martin Parish School Board*, you recommended closing a historically white school as a "practical measure" to "immediately eliminate it as a vestige of the prior de jure system." The district court ruled against this recommendation and called it "harsh" and "extreme." Why did you feel that closing the school was an appropriate recommendation?

Response: From August 2020 to January 2023, I served as co-counsel for the United States of America in *Thomas, et al. v. St. Martin Parish School Board,* Docket No. 65-cv-11314 in the Western District of Louisiana.

As an employee of the Department of Justice, I am prohibited by Section 1-7 of the Justice Manual from commenting on the parties' arguments as this case is still pending. Further, it would not be appropriate for me to comment in light of Canon 3(A)(6) of the Code of Conduct for United States Judges, which prohibits comments on the merits of pending cases.

SENATOR TED CRUZ
U.S. Senate Committee on the Judiciary

Questions for the Record for Jerry Edwards Jr., nominated to be United States District Judge for the Western District of Louisiana

I. Directions

Please provide a wholly contained answer to each question. A question's answer should not cross-reference answers provided in other questions. Because a previous nominee declined to provide any response to discrete subparts of previous questions, they are listed here separately, even when one continues or expands upon the topic in the immediately previous question or relies on facts or context previously provided.

If a question asks for a yes or no answer, please provide a yes or no answer first and then provide subsequent explanation. If the answer to a yes or no question is sometimes yes and sometimes no, please state such first and then describe the circumstances giving rise to each answer.

If a question asks for a choice between two options, please begin by stating which option applies, or both, or neither, followed by any subsequent explanation.

If you disagree with the premise of a question, please answer the question as-written and then articulate both the premise about which you disagree and the basis for that disagreement.

If you lack a basis for knowing the answer to a question, please first describe what efforts you have taken to ascertain an answer to the question and then provide your tentative answer as a consequence of its reasonable investigation. If even a tentative answer is impossible at this time, please state why such an answer is impossible and what efforts you, if confirmed, or the administration or the Department, intend to take to provide an answer in the future. Please further give an estimate as to when the Committee will receive that answer.

To the extent that an answer depends on an ambiguity in the question asked, please state the ambiguity you perceive in the question, and provide multiple answers which articulate each possible reasonable interpretation of the question in light of the ambiguity.

II. Questions

1. **Is racial discrimination wrong?**

Response: The Supreme Court has held that discrimination based on race must survive strict scrutiny; that is to say, the challenged activity must be narrowly tailored to advance a compelling interest. "[A]ll racial classifications, imposed by whatever federal, state, or local governmental actor, must be analyzed by a reviewing court under strict scrutiny. In other words, such classifications are constitutional only if they are narrowly tailored measures that further compelling governmental interests." *Adarand Constructors, Inc. v. Pena,* 115 S.Ct. 2097, 2113 (1995). Further there are federal laws that prohibit racial discrimination such as the Civil Rights Act and the Fair Housing Act.

2. **Are there any unenumerated rights in the Constitution, as yet unarticulated by the Supreme Court that you believe can or should be identified in the future?**

Response: Whether there are any unenumerated rights protected by the Constitution that have not yet been articulated could be litigated before me should I be confirmed to be a district judge. Accordingly, it would be inappropriate under Canon 1 of the Code of Conduct for United States Judges, which requires judges to uphold the integrity and independence of the judiciary, to prejudge the issue of whether such rights exist. As a district judge, I will employ the Supreme Court's test for whether the Constitution protects any such asserted unenumerated rights. Specifically, whether the asserted rights are deeply rooted in the nation's history and tradition and implicit in the concept of ordered liberty. See *Glucksberg v Washington,* 117 S.Ct. 2258 (1997).

3. **How would you characterize your judicial philosophy? Identify which U.S. Supreme Court Justice's philosophy out of the Warren, Burger, Rehnquist, and Roberts Courts is most analogous with yours.**

Response: I have not studied the judicial philosophies of the justices listed above. However, my philosophy will be similar to those justices who approach every case with an open mind, who thoroughly study the law and facts of each case and clearly articulate the basis for each ruling.

4. **Please briefly describe the interpretative method known as originalism. Would you characterize yourself as an "originalist"?**

Response: Black's Law Dictionary defines originalism as "[t]he doctrine that words of a legal instrument are to be given the meanings they had when they were adopted; specif., the canon that a legal text should be interpreted though the historical ascertainment of the meaning that it would have conveyed to a fully informed observer at the time when the text first took effect." Black's Law Dictionary (11th ed. 2019). I do not use any labels to characterize my approach to interpreting the law; however, I will approach

every case using the analytical framework set forth in the applicable binding precedent. If there is no precedent, I will apply the relevant rules of construction to determine the meaning of the disputed provision.

5. **Please briefly describe the interpretive method often referred to as living constitutionalism. Would you characterize yourself as a 'living constitutionalist'?**

Response: "A constitution whose interpretation and application can vary over time according to changing circumstances and changing social values." Black's Law Dictionary, (11th ed. 2019). I do not use any labels to characterize my approach to interpreting the law; however, I will approach every case using the analytical framework set forth in the applicable binding precedent. If there is no precedent, I will apply the relevant rules of construction to determine the meaning of the disputed provision.

6. **If you were to be presented with a constitutional issue of first impression— that is, an issue whose resolution is not controlled by binding precedent—and the original public meaning of the Constitution were clear and resolved the issue, would you be bound by that meaning?**

Response: As a district court judge dealing with an issue of first impression, I would be required to utilize the analytical framework set forth by the Supreme Court and Fifth Circuit that pertains to the constitutional question presented. For example, I would analyze an issue of first impression pertaining to the Second Amendment under the *Bruen* test recently articulated by the Supreme Court: "When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation. Only then may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.'" *New York State Rifle & Pistol Association, Inc. v. Bruen,* 142 S.Ct. 2111, 2129-2130 (2022).

7. **Is the public's current understanding of the Constitution or of a statute ever relevant when determining the meaning of the Constitution or a statute? If so, when?**

Response: The Supreme Court recently observed that the determination of the public understanding of a constitutional provision or statute at the time it was enacted is essential to determine its meaning. *See District of Columbia v. Heller*, 128 S.Ct. 2783 (2008); *New York State Rifle & Pistol Association, Inc. v. Bruen,* 142 S.Ct. 2111, 2132 (2022) (the meaning of the Constitution "is fixed according to the understandings of those who ratified it"); *Bostock v. Clayton County,* 140 S.Ct. 1731, 1738 (2020) ("This Court normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment.")

8. **Do you believe the meaning of the Constitution changes over time absent changes**

through the Article V amendment process?

Response: As recently set forth by the United States Supreme Court, the meaning of the Constitution "is fixed according to the understandings of those who ratified it." *New York State Rifle & Pistol Association, Inc. v. Bruen,* 142 S.Ct. 2111, 2132 (2022). If I am confirmed to be a district court judge, I am committed to applying the meaning of constitutional provisions as determined by Supreme Court and Fifth Circuit precedent.

9. **Is the Supreme Court's ruling in *Dobbs v. Jackson Women's Health Organization* settled law?**

Response: Yes. The Supreme Court's *Dobbs* decision is binding precedent.

a. **Was it correctly decided?**

Response: As a judicial nominee, it would not be appropriate for me to comment on the merits of the decision in light of Canon 1 and Canon 3 of the Code of Conduct for United States Judges.

10. **Is the Supreme Court's ruling in *New York Rifle & Pistol Association v. Bruen* settled law?**

Response: Yes. The Supreme Court's *Bruen* decision is binding precedent.

a. **Was it correctly decided?**

Response: As a judicial nominee, it would not be appropriate for me to comment on the merits of the decision in light of Canon 1 and Canon 3 of the Code of Conduct for United States Judges.

11. **Is the Supreme Court's ruling in *Brown v. Board of Education* settled law?**

Response: Yes. The Supreme Court's *Brown* decision is binding precedent.

a. **Was it correctly decided?**

Response: Given that it is very unlikely that *Brown's* holding will be challenged, Canon 1 and Canon 3 of the Code of Conduct for United States Judges are not implicated. Accordingly, it is permissible to comment that yes, *Brown* was correctly decided.

12. **What sort of offenses trigger a presumption in favor of pretrial detention in the federal criminal system?**

Response: A crime of violence, an offense for which the maximum punishment is life imprisonment or death, a drug offense that has a maximum punishment of ten or more

years, a felony offense involving a minor victim or a dangerous weapon. 18 U.S.C. § 3142.

a. **What are the policy rationales underlying such a presumption?**

Response: The offenses involve circumstances in which a defendant is charged with a violent crime and thus could pose a danger to public safety if released. The offenses also address situations where a defendant is charged with a serious drug offense and would likely have interstate or foreign connections that can assist the defendant in absconding and avoiding a significant period of confinement. 9B Federal Procedure, L. Ed. § 22:1893 (August 2023 Update).

13. **Are there identifiable limits to what government may impose—or may require—of private institutions, whether it be a religious organization like Little Sisters of the Poor or small businesses operated by observant owners?**

Response: Yes, there are limits; however, the scope of those limits will depend on the nature of the challenged activity and the nature of the private institution involved. *See* the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb *et seq.; see also Tandon v. Newsom,* 141 S.Ct. 1294, 1296 (2021) (government regulations must satisfy strict scrutiny whenever they treat comparable secular activity more favorably than religious exercise); *303 Creative, LLC v. Elenis,* 143 S.Ct. 2298 ("government may not compel a person to speak its own preferred messages.") If I am confirmed to be a district judge, I will carefully study any case that should come before me involving these issues and will apply the Supreme Court and Fifth Circuit precedent to the facts.

14. **Is it ever permissible for the government to discriminate against religious organizations or religious people?**

Response: The Supreme Court has held that discrimination against religious organizations or religious people must survive strict scrutiny; that is to say, the challenged activity must be narrowly tailored to advance a compelling interest. *See* the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb *et seq.; Tandon v. Newsom,* 141 S.Ct. 1294, 1296 (2021) (government regulations must satisfy strict scrutiny whenever they treat comparable secular activity more favorably than religious exercise); *see also Burwell v. Hobby Lobby Stores, Inc.,*134 S.Ct. 2751 (2014).

15. **In *Roman Catholic Diocese of Brooklyn v. Cuomo*, the Roman Catholic Diocese of Brooklyn and two Orthodox Jewish synagogues sued to block enforcement of an executive order restricting capacity at worship services within certain zones, while certain secular businesses were permitted to remain open and subjected to different restrictions in those same zones. The religious organizations claimed that this order violated their First Amendment right to free exercise of religion. Explain the U.S. Supreme Court's holding on whether the religious entity-applicants were entitled to a preliminary injunction.**

Response: The Supreme Court ruled in favor of the applicants by weighing the factors that govern injunctive relief: 1) the applicants were likely to succeed on merits because the government could not show that restrictions were narrowly tailored to advance the government's interest in preventing the spread of COVID-19; 2) the applicants were irreparably harmed because the restrictions infringed on their First Amendment freedoms; and 3) the government had not shown how granting the injunction would harm the public.

16. **Please explain the U.S. Supreme Court's holding and rationale in *Tandon v. Newsom*.**

Response: The Supreme Court determined that California's COVID restrictions were not neutral and generally applicable because it treated secular activity more favorably than comparable religious activity. Accordingly, the Supreme Court held that the government action must satisfy strict scrutiny.

17. **Do Americans have the right to their religious beliefs outside the walls of their houses of worship and homes?**

Response: Yes; the Supreme Court has held that the Free Exercise Clause of the Constitution protects religious exercise in activities of daily life. See *Kennedy v. Bremerton School District,* 142 S.Ct. 2407, 2421 (2022).

18. **Explain your understanding the U.S. Supreme Court's holding in *Masterpiece Cakeshop v. Colorado Civil Rights Commission.***

Response: The Supreme Court held that the Colorado Civil Rights Commission violated the Free Exercise Clause of the Constitution because the Commission's actions reflected hostility toward religion and the Free Exercise Clause bars even "subtle departures from neutrality."

19. **Under existing doctrine, are an individual's religious beliefs protected if they are contrary to the teaching of the faith tradition to which they belong?**

Response: Supreme Court precedent requires a plaintiff to establish that the burdened religious practice is sincere to be afforded protection under the Free Exercise Clause. *See Kennedy v. Bremerton School District,* 142 S.Ct. 2407 (2022); *see also Burwell v. Hobby Lobby Stores, Inc.,*134 S.Ct. 2751 (2014).

a. **Are there unlimited interpretations of religious and/or church doctrine that can be legally recognized by courts?**

Response: Supreme Court precedent requires a plaintiff to establish that the burdened religious practice is sincere to be afforded protection under the Free Exercise Clause. *Kennedy v. Bremerton School District,* 142 S.Ct. 2407 (2022). If confirmed and confronted with such a case, I will apply the appropriate framework

of analysis in accordance with Supreme Court and Fifth Circuit precedent to determine if the religious practice at issue falls within the scope of First Amendment protection.

b. **Can courts decide that anything could constitute an acceptable "view" or "interpretation" of religious and/or church doctrine?**

Response: See my answer to part (a).

c. **Is it the official position of the Catholic Church that abortion is acceptable and morally righteous?**

Response: I have not researched the official position of the Catholic Church on this issue. It would be inappropriate to offer an opinion on the Catholic Church's position under the Canon 3 of Code of Conduct for United States Judges, which requires judges to perform their duties impartially, as the Catholic Church may be party to litigation on this issue and any opinion on its position could imply that I have prejudged the matter.

20. **In *Our Lady of Guadalupe School v. Morrissey-Berru*, the U.S. Supreme Court reversed the Ninth Circuit and held that the First Amendment's Religion Clauses foreclose the adjudication of employment-discrimination claims for the Catholic school teachers in the case. Explain your understanding of the Court's holding and reasoning in the case.**

Response: The Court held that the ministerial exception, which does not permit government intervention in employment disputes in religious organizations, covers employees of religious organizations who are responsible for educating and forming students in the faith. The Court reasoned that judicial review of the way religious schools supervise its teachers would undermine the independence of the religious institution.

21. **In *Fulton v. City of Philadelphia*, the U.S. Supreme Court was asked to decide whether Philadelphia's refusal to contract with Catholic Social Services to provide foster care, unless it agrees to certify same-sex couples as foster parents, violates the Free Exercise Clause of the First Amendment. Explain the Court's holding in the case.**

Response: The Court determined that Philadelphia's decision to not enter into a full foster care contract with Catholic Social Services (CSS) because of the city's non-discrimination requirement imposed a burden on CSS's religious exercise that was subject to strict scrutiny because the city's requirement was discretionary. In this context, the Supreme Court held that the courts must scrutinize the government's compelling interest against the asserted harm to that interest of not granting an exemption to a particular religious group. The Court held that Philadelphia's interests could not justify denying CSS an exception to the city's non-discrimination

requirement.

22. **In *Carson v. Makin*, the U.S. Supreme Court struck down Maine's tuition assistance program because it discriminated against religious schools and thus undermined Mainers' Free Exercise rights. Explain your understanding of the Court's holding and reasoning in the case.**

Response: The Supreme Court concluded that Maine's tuition assistance program violated the Free Exercise Clause of the Constitution by not allowing parents to use the assistance at religious schools. The Court rejected the state's Establishment Clause argument because the assistance would flow to religious organizations through a parent's private choice.

23. **Please explain your understanding of the U.S. Supreme Court's holding and reasoning in *Kennedy v. Bremerton School District*.**

Response: The Supreme Court held that the Free Exercise and Free Speech Clauses of the Constitution protected the plaintiff's right to say a private prayer on the football field after a game. As for the Free Exercise analysis, the Court determined that the plaintiff's prayer was his sincerely held religious practice, that the government's prohibition of this practice was not neutral and that the government prohibition could not satisfy strict scrutiny. As for the Free Speech Clause, the Court determined that the plaintiff's prayer was private speech which could not be prohibited by the government which contended, without evidentiary support, that it was protecting its obligation under the Establishment Clause.

24. **Explain your understanding of Justice Gorsuch's concurrence in the U.S. Supreme Court's decision to grant certiorari and vacate the lower court's decision in *Mast v. Fillmore County*.**

Response: Justice Gorsuch's concurrence in *Mast* provided further guidance to the lower courts on his view of the proper strict scrutiny analysis required under the Religious Land Use and Institutionalized Persons Act. Specifically, the government's compelling interest must be more than general, and it must be examined by application of the government's action to this particular Amish community. The court's analysis should consider the harm to the government's interest in granting an exception to this particular religious group.

25. **Some people claim that Title 18, Section 1507 of the U.S. Code should not be interpreted broadly so that it does not infringe upon a person's First Amendment right to peaceably assemble. How would you interpret the statute in the context of the protests in front the homes of U.S. Supreme Court Justices following the *Dobbs* leak?**

Response: The interpretation of 18 U.S.C. §1507 may come before me should I be confirmed; therefore, the Code of Conduct for United States Judges provides that it

would be inappropriate for me to offer an opinion as to how broadly the statute should be interpreted. Any opinion I may offer could be interpreted as prejudging the issue. I can commit that if confirmed, I will follow Supreme Court and Fifth Circuit precedent; any views I may have would play no part in how I would approach this issue should it come before me as a judge.

26. **Would it be appropriate for the court to provide its employees trainings which include the following:**

a. **One race or sex is inherently superior to another race or sex;**

Response: No.

b. **An individual, by virtue of his or her race or sex, is inherently racist, sexist, or oppressive;**

Response: No.

c. **An individual should be discriminated against or receive adverse treatment solely or partly because of his or her race or sex; or**

Response: No.

d. **Meritocracy or related values such as work ethic are racist or sexist?**

Response: No.

27. **Will you commit that your court, so far as you have a say, will not provide trainings that teach that meritocracy, or related values such as work ethic and self-reliance, are racist or sexist?**

Response: Yes.

28. **Will you commit that you will not engage in racial discrimination when selecting and hiring law clerks and other staff, including giving a "plus" factor to certain applicants based on their race, should you be confirmed?**

Response: Yes, I commit that I will not engage in racial discrimination.

29. **Is it appropriate to consider skin color or sex when making a political appointment? Is it constitutional?**

Response: Political appointments are governed by Article II, Section 2, Clause 2 of the U.S. Constitution. I will follow Supreme Court and Fifth Circuit precedent should this issue come before me as a judge.

30. **Is the criminal justice system systemically racist?**

Response: My experience with the criminal justice system is limited to the Western District of Louisiana, where I currently serve as First Assistant United States Attorney. The Western District of Louisiana's prosecutors, public defenders and Judges all strive to uphold the constitutional rights of all citizens without regard to their race.

31. **Do you believe that Congress should increase, or decrease, the number of justices on the U.S. Supreme Court? Please explain.**

Response: I believe this issue should be left to Congress. It would be inappropriate to offer an opinion on this issue as it implicates Canon 1 of the Code of Conduct for United States Judges, which requires judges to uphold the integrity and independence of the judiciary.

32. **In your opinion, are any currently sitting members of the U.S. Supreme Court illegitimate?**

Response: The Justices of the U.S. Supreme Court are all legitimately appointed members of the Court.

33. **What do you understand to be the original public meaning of the Second Amendment?**

Response: The Supreme Court in *District of Columbia v. Heller*, 128 S.Ct. 2783 (2008) articulated that the original public meaning of the Second Amendment contemplated the personal right to bear arms for lawful purposes particularly self-defense in the home.

34. **What kinds of restrictions on the Right to Bear Arms do you understand to be prohibited by the U.S. Supreme Court's decisions in *United States v. Heller*, *McDonald v. Chicago*, and *New York State Rifle & Pistol Association v. Bruen*?**

Response: This line of cases holds that any restriction on the right to bear arms that does not comport with our nation's historical tradition is prohibited.

35. **Is the ability to own a firearm a personal civil right?**

Response: The Supreme Court held in *District of Columbia v. Heller* that the right to own a firearm is an individual right protected by the Second Amendment.

36. **Does the right to own a firearm receive less protection than the other individual rights specifically enumerated in the Constitution?**

Response: The United States Supreme Court recently articulated that the right to bear

arms "is not a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees." *New York State Rifle & Pistol Association, Inc. v. Bruen,* 142 S.Ct. 2111, 2156 (2022).

37. **Does the right to own a firearm receive less protection than the right to vote under the Constitution?**

Response: See my answer to Question 36.

38. **Is it appropriate for the executive under the Constitution to refuse to enforce a law, absent constitutional concerns? Please explain.**

Response: Article II, Section 3 of the U.S. Constitution requires the President to "take Care that the Laws be faithfully executed." Further, the Supreme Court has recognized that an agency's decision not to enforce a law is within the agency's discretion. *Heckler v. Chaney,* 105 S.Ct. 1649, 1655 (1985)

39. **Explain your understanding of what distinguishes an act of mere 'prosecutorial discretion' from that of a substantive administrative rule change.**

Response: Black's Law Dictionary defines prosecutorial discretion as "[a] prosecutor's power to choose from the options available in a criminal case, such as filing charges, prosecuting, not prosecuting, plea-bargaining, and recommending a sentence to the court. Black's Law Dictionary (11th ed. 2019). A substantive administrative rule change would need to comply with the provisions of the Administrative Procedure Act.

40. **Does the President have the authority to abolish the death penalty?**

Response: No. The death penalty is set forth in 18 U.S.C. § 3591.

41. **Explain the U.S. Supreme Court's holding on the application to vacate stay in *Alabama Association of Realtors v. HHS*.**

Response: The Supreme Court vacated the stay of the district court's judgment in favor of the plaintiffs holding that the CDC lacked the statutory authority to impose an eviction moratorium. The Court held that the stay was not warranted under the four-factor test governing stays: 1) the plaintiffs were likely to succeed on the merits because there was no clear authorization from Congress for the CDC's authority to impose the moratorium; 2) the moratorium put the plaintiffs at risk of irreparable injury by depriving them of rent payments with no guarantee of recovery; 3) the interest to the government in maintaining the stay had decreased; and 4) Congress did not extend the moratorium and it was up to Congress, not the CDC, to decide whether the public interest merited an extension.

42. **Is it appropriate for a prosecutor to publicly announce that they are going to prosecute a member of the community before they even start an investigation as to**

that person's conduct?

Response: I am unaware of such conduct ever occurring in the Western District of Louisiana and any such conduct would be inappropriate in our office.

43. **You have been involved in litigation against Louisiana charter schools involving race-based admissions? Did the charter school that you sued segregate students based on race?**

Response: From September 2020 to February 2023, I served as co-counsel for the United States of America in *Smith, et al. v. Concordia Parish School Board, et al.,* Docket No. 65-cv-11577 in the Western District of Louisiana. A school desegregation case.

The Concordia Parish School District has been operating under a desegregation order since 1970. Delta Charter Group, Inc. (a local charter school) intervened in this litigation in September 2012 and entered into a Consent Decree with the other parties in January 2013. One of the agreements between the parties, as reflected in the 2013 Consent Decree, was for the student enrollment at Delta Charter Group, Inc. to reflect the racial demographics of the Concordia Parish School District.

As an employee of the Department of Justice, I am prohibited by Section 1-7 of the Justice Manual from commenting on whether the charter school segregated students based on race as this matter is still pending. Further, it would not be appropriate for me to comment in light of Canon 3(A)(6) of the Code of Conduct for United States Judges, which prohibits comments on the merits of pending cases.

44. **Do you agree with Justices Clarence Thomas and John Marshall Harlan that our Constitution is colorblind?**

Response: I am unable to agree with this statement as I have not researched Justices Thomas's and Harlan's statements on this issue to understand their meaning. However, the Supreme Court has determined that race is a protected class and any racial classifications must satisfy the highest level of scrutiny, strict scrutiny, to be constitutional. If I am confirmed, I will scrupulously follow this precedent and apply it to the facts of each particular case.

45. **Why should the government eschew individual merit in favor of skin color?**

Response: The Supreme Court has held that any governmental action based on racial classifications must be accomplished by the least restrictive means tailored to satisfy a compelling interest. Put simply, any racial classification must satisfy strict scrutiny.

46. **What was the holding of Justice Powell's plurality opinion in *Bakke v. Regents of the University of California*?**

Response: The holding of the plurality opinion in *Bakke* is that racial quotas are impermissible.

47. **In 2021, you defended the Biden administration's Covid-19 vaccine mandate for federal contractors. In your opposition brief, you argued that the President, in his capacity as "CEO of the Executive Branch as a market participant," had the "unrestricted power to produce its own supplies, to determine those with whom it will deal, and to fix the terms and conditions upon which it will make needed purchases."**

a. **Under your argument, does the President have any limiting principle under the Procurement Act?**

Response: As an Assistant United States Attorney, I served as co-counsel for the federal government in defending the Covid-19 vaccine mandate for federal contractors. As a district court nominee, it would be inappropriate for me to offer an opinion on hypothetical limits to the President's authority under the Procurement Act as such an opinion could be interpreted as prejudging future potential litigation involving the Act.

b. **It would seem that you argued that the President has unrestricted power to use procurement regulations to reach through an employing contractor to force a vaccine mandate on *individual employees*. Is that correct? If not, explain.**

Response: The federal government's position in this case was that the President's authority under the Procurement Act was limited by the language of the Act which requires a sufficiently close nexus between the executive order and the values of economy and efficiency in federal procurement and contracting.

Senator John Kennedy
Questions for the Record

Mr. Jerry Edwards

1. **Please describe your judicial philosophy. Be as specific as possible.**

   Response: My judicial philosophy will be to: 1) approach every case with an open mind; 2) thoroughly study the law and facts of each case; and 3) clearly articulate the basis for each ruling in the record.

2. **Do you believe the meaning of the Constitution is immutable or does it evolve over time?**

   Response: The Supreme Court recently observed that constitutional provisions are "intended to endure for ages to come and consequently, to be adapted to the various crises of human affairs. Although its meaning is fixed according to the understandings of those who ratified it, the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated." *New York State Rifle & Pistol Association, Inc. v. Bruen,* 142 S.Ct. 2111, 2132 (2022) (citations omitted). I believe that it is the role of a district court judge to apply the meaning of the Constitution as dictated by Supreme Court and Circuit Court precedent.

3. **Please describe how you would determine the meaning of an ambiguous term or phrase in a statute or legal document.**

   Response: I would first look for applicable Supreme Court and Fifth Circuit precedent on the ambiguous term or phrase and apply it accordingly. If there were no binding precedent, I would apply the applicable rules of construction to the term or phrase to determine its meaning. I would also look for persuasive authority from other courts that have interpreted the subject term or phrase. Secondary sources such as treatises or law review articles may be useful in combination with the tools of statutory construction, if there is no binding precedent.

4. **Should a judge look beyond a law's text, even if clear, to consider its purpose and the consequences of ruling a particular way when deciding a case?**

   Response: No. One of the basic tenets of construction is that when the meaning of a law is clear, no further inquiry is necessary. The law should be applied as written.

5. **Should a judge consider statements made by a president as part of legislative history when construing the meaning of a statute?**

   Response: Legislative history should be the last tool utilized to interpret the meaning of a statute and should be used in conjunction with other tools of statutory construction. The Supreme Court has stated that "the authoritative source for finding the Legislature's intent lies in the Committee Reports on the bill, which 'represent the considered and

collective understanding of those Congressmen involved in drafting and studying the proposed legislation.'" *Garcia v. United States,* 105 S.Ct. 479, 483 (1984). However, the Supreme Court has cautioned that "legislative history is itself often murky, ambiguous, and contradictory." *Exxon Mobil Corp. v. Allapattah Services, Inc.,* 125 S.Ct. 2611, 2626 (2005).

6. **Is there ever an appropriate circumstance in which a district court judge ignores or circumvents precedent set by the circuit court within which it sits or the U.S. Supreme Court?**

   Response: No.

7. **Are state laws that require voters to present identification in order to cast a ballot illegitimate, draconian, or racist?**

   Response: In *Crawford v. Marion County Election Bd.,* 128 S.Ct. 1610 (2008), the Supreme Court upheld Indiana's law requiring citizens voting in person to present identification. If I am confirmed and confronted with this issue, I will follow the applicable Supreme Court and Fifth Circuit precedent and apply it to the facts of each case.

8. **Please describe the analysis will you use, if confirmed, to evaluate whether a law or regulation infringes on an individual's rights under the Second Amendment in light of the Supreme Court's opinion in *Bruen*.**

   Response: I would apply the standard recently articulated by the United States Supreme Court: "When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation. Only then may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.'" *New York State Rifle & Pistol Association, Inc. v. Bruen,* 142 S.Ct. 2111, 2129-2130 (2022).

9. **How does the judicial branch decide when an agency has exercised more authority than Congress delegated or otherwise exceeded its rulemaking powers?**

   Response: The court should employ a two-part test when reviewing an agency's construction of a statute. First, the court must determine "whether Congress has directly spoken to the precise question at issue." *Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.,* 104 S.Ct. 2778, 2782 (1984). If the intent of Congress is clear, the court and the agency must give effect to the unambiguously expressed intent of Congress. *Id.* However, if Congress has not directly addressed the issue, the question for the court is whether the agency's interpretation of the statute is reasonable. *Id.*

   In *Biden v. Nebraska,* 143 S.Ct. 2355 (2023), the Supreme Court recently articulated that courts should examine the history and breadth of the authority the agency has asserted

and the economic and political significance of the assertion, to determine whether the exercised agency authority is appropriate. *See also West Virginia v. Environmental Protection Agency,* 142 S.Ct. 2587 (2022).

10. In *Gundy v. United States*, 588 U.S. ___ (2019), justices in dissent indicated willingness to limit the non-delegation doctrine, arguing that Congress can only delegate authority that is non-legislative in nature. Does the Constitution limit the power to define criminal offenses to the legislative branch?

Response: The Supreme Court has recognized that "[t]he Constitution . . . makes few explicit references to federal criminal law, but the Necessary and Proper Clause nonetheless authorizes Congress, in the implementation of other explicit powers, to create federal crimes . . . ." *United States v. Kebodeaux*, 133 S.Ct. 2496, 2503 (2013). In *Kebodeaux,* Congress delegated to the Executive Branch the authority to designate certain offenses as sexual offenses for the purposes of the registration requirements in the Sex Offender Registration and Notification Act (SORNA); however, I am unaware of any Supreme Court or Fifth Circuit precedent on the issue of the delegation of authority to define a criminal offense.

This is an issue that may appear before me and therefore any comments could be construed as a prejudgment of the issue, which would not comport with Canon 3 of the Code of Conduct for United States Judges. If I am confronted with this issue as a district judge, I will study the law closely and apply it to the facts of the case to determine if such delegation is constitutional.

11. Does the meaning of the Eighth Amendment change over time? Why or why not?

Response: The Supreme Court has observed that "the Eighth Amendment's protection against excessive or cruel and unusual punishments flows from the basic 'precept of justice that punishment for a crime should be graduated and proportioned to the offense. Whether this requirement has been fulfilled is determined not by the standards that prevailed when the Eighth Amendment was adopted in 1791 but by the norms that 'currently prevail.'" *Kennedy v. Louisiana,* 128 S.Ct. 2641, 2649 (2008) (citations omitted). The Supreme Court further observed: "[t]his is because the standard of extreme cruelty is not merely descriptive, but necessarily embodies a moral judgment. The standard itself remains the same, but its applicability must change as the basic mores of society change." *Id.; see also New York State Rifle & Pistol Association, Inc. v. Bruen,* 142 S.Ct. 2111, 2132 (2022) (constitutional provisions are "intended to endure for ages to come and consequently, to be adapted to the various crises of human affairs. Although its meaning is fixed according to the understandings of those who ratified it, the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated.") (citations omitted).

12. Is the death penalty constitutional?

Response: The Supreme Court has held that the death penalty is constitutional. *Gregg v. Georgia,* 96 S.Ct. 2909 (1976). The Supreme Court has also observed some limitations to the death penalty. *See Atkins v. Virginia,* 122 S.Ct. 2242 (2002) (prohibiting the execution of mentally retarded offenders); and *Roper v. Simmons,* 125 S.Ct. 1183 (2005) (prohibiting the execution of those who were under 18 at the time of the offense). As a district judge, I will follow Supreme Court and Fifth Circuit precedent should these issues come before me.

13. **Please describe the legal basis that allows federal courts to issue universal injunctions**.

Response: Injunctions are governed by Rule 65 of the Federal Rules of Civil Procedure. In order to obtain an injunction, the movant must satisfy four criteria: 1) a likelihood of success on the merits; 2) an irreparable injury that will result if an injunction is not granted; 3) the harm to the movant if the injunction is not granted outweighs the harm to the defendant if the injunction is granted; and 4) the injunction would serve the public interest. The Fifth Circuit has recognized that the Constitution vests federal district courts with the "judicial power of the United States" that is not limited to the district where the court sits but extends across the country. Thus, it is within the court's power, when necessary, to issue a universal (nationwide) injunction. See *Texas v. United States,* 809 F.3d 134, 188 (5th 2015).

14. Please identify one federal judge or justice, current or former, whose service on the bench most inspires you and explain why you will seek to emulate it if confirmed.

Response: Judge Carl Stewart currently serves on the 5th Circuit Court of Appeals. He was the first African American appointed to this court as it is currently constituted and was the first African American to serve as Chief Judge of this court. He is based in Shreveport and I have always been inspired by his involvement in the legal profession and in the community. He is a charter member of our local Inn of Court and has served two terms as President of the American Inns of Court. He has served on several boards of local community organizations, and he has always been a promoter of the Boy Scouts. If I am confirmed, I will strive to have an impact on the legal profession and the community as Judge Stewart has done. Judges have a unique role in the legal profession because lawyers listen when judges speak. Judges can have a unique impact on advancing professionalism and civility in the profession. Judges also have a unique role in the community. People in the community listen when judges speak and judges can play an important part of making sure that people understand the rule of law and thus build confidence in our system of justice.

Questions from Senator Thom Tillis
for Jerry Edwards, Jr. Nominee to be United States District Court Judge for the Western District of Louisiana

1. **Do you believe that a judge's personal views are irrelevant when it comes to interpreting and applying the law?**

   Response: Yes.

2. **What is judicial activism? Do you consider judicial activism appropriate?**

   Response: Black's Law Dictionary defines judicial activism as "[a] philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions." Black's Law Dictionary, (11th ed. 2019). Judicial activism is not appropriate.

3. **Do you believe impartiality is an aspiration or an expectation for a judge?**

   Response: Impartiality should be expected from a judge.

4. **Should a judge second-guess policy decisions by Congress or state legislative bodies to reach a desired outcome?**

   Response: No.

5. **Does faithfully interpreting the law sometimes result in an undesirable outcome? How, as a judge, do you reconcile that?**

   Response: Virtually every case resolved by the court results in an undesirable outcome for one of the parties. As a district judge, I will ensure that the reasoning for my rulings is clearly based on the facts and the law and stated in the record.

6. **Should a judge interject his or her own politics or policy preferences when interpreting and applying the law?**

   Response: No.

7. **What will you do if you are confirmed to ensure that Americans feel confident that their Second Amendment rights are protected?**

   Response: I will scrupulously follow Supreme Court precedent on the Second Amendment as recently set forth in *District of Columbia v. Heller,* 128 S.Ct. 2783 (2008), *McDonald v. Chicago,* 130 S.Ct. 3020 (2010), and *New York State Rifle & Pistol Association, Inc. v. Bruen,* 142 S.Ct. 2111 (2022).

8. How would you evaluate a lawsuit challenging a Sheriff's policy of not processing handgun purchase permits?

Response: I would apply the standard recently articulated by the United States Supreme Court: "When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation. Only then may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.'" *New York State Rifle & Pistol Association, Inc. v. Bruen,* 142 S.Ct. 2111, 2129-2130 (2022).

9. What process do you follow when considering qualified immunity cases, and under the law, when must the court grant qualified immunity to law enforcement personnel and departments?

Response: Qualified immunity prevents suits against law enforcement personnel when they are acting within their official capacity to carry out their duties, unless they have violated a clearly established constitutional or statutory right. *See Pearson v. Callahan,* 129 S.Ct. 808, 815 (2009). Qualified immunity is different from an affirmative defense (such as comparative fault or failure to mitigate damages), it is immunity from suit. *Id.; Carswell v. Camp,* 54 F.4th 307, 310 (5th Cir. 2022). Therefore, my process when considering qualified immunity cases will be to decide whether it applies at the beginning of the case to prevent the defendant from incurring unnecessary legal expense.

10. Do you believe that qualified immunity jurisprudence provides sufficient protection for law enforcement officers who must make split-second decisions when protecting public safety?

Response: If I am confirmed, I will follow Supreme Court and Fifth Circuit precedent on qualified immunity. It would be inappropriate for me to comment on the merits of qualified immunity jurisprudence in light of Canon 3(A)(6) of the Code of Conduct for United States Judges.

11. What do you believe should be the proper scope of qualified immunity protections for law enforcement?

Response: Please see my responses to questions 9 and 10.

12. Throughout the past decade, the Supreme Court has repeatedly waded into the area of patent eligibility, producing a series of opinions in cases that have only muddled the standards for what is patent eligible. The current state of eligibility jurisprudence is in abysmal shambles. What are your thoughts on the Supreme Court's patent eligibility jurisprudence?

Response: If confirmed to serve as a district court judge, I will follow the applicable Supreme Court and Fifth Circuit precedent regarding patent eligibility. Further, it would be

inappropriate for me to offer an opinion on the Supreme Court's patent eligibility jurisprudence as it could cause parties to believe that I have prejudged the matter which would be a violation of Canon 3(A)(6) of the Code of Conduct for United States Judges.

13. Do you believe the current patent eligibility jurisprudence provides the clarity and consistency needed to incentivize innovation? How would you apply the Supreme Court's ineligibility tests—laws of nature, natural phenomena, and abstract ideas—to cases before you?

Response: See my answer to Question 12. If I am confirmed, I will carefully study and apply the Supreme Court's ineligibility tests in accordance with Supreme Court and Fifth Circuit precedent to the facts of each case.

14. Copyright law is a complex area of law that is grounded in our constitution, protects creatives and commercial industries, and is shaped by our cultural values. It has become increasingly important as it informs the lawfulness of a use of digital content and technologies.

a. What experience do you have with copyright law?

Response: I have not had the opportunity to research or litigate copyright law during my 13 years in private practice or in the last 4 and half years that I have been in the United States Attorney's Office.

b. Please describe any particular experiences you have had involving the Digital Millennium Copyright Act.

Response: See my answer to Question 14a.

c. What experience do you have addressing intermediary liability for online service providers that host unlawful content posted by users?

Response: See my answer to Question 14a.

d. What experience do you have with First Amendment and free speech issues? Do you have experience addressing free speech and intellectual property issues, including copyright?

Response: I have not litigated First Amendment, free speech or intellectual property issues during my 13 years in private practice or in the last 4 and half years that I have been in the United States Attorney's Office.

15. The legislative history of the Digital Millennium Copyright Act reinforces the statutory text that Congress intended to create an obligation for online hosting services to address

infringement even when they do not receive a takedown notice. However, the Copyright Office reported that courts have conflated statutory obligations and created a "high bar" for "red flag knowledge, effectively removing it from the statute..." It also reported that courts have made the traditional common law standard for "willful blindness" harder to meet in copyright cases.

a. **In your opinion, where there is debate among courts about the meaning of legislative text, what role does or should Congressional intent, as demonstrated in the legislative history, have when deciding how to apply the law to the facts in a particular case?**

   Response: If there is Fifth Circuit precedent interpreting the legislative text at issue, legislative history will not play a role in deciding how to apply the law to the facts of a particular case, as district court judges are bound to follow precedent. In the absence of binding precedent, legislative history could be a tool in interpreting ambiguous text, if the applicable rules statutory construction do not make the meaning of the text clear. However, the Supreme Court has cautioned that "legislative history is itself often murky, ambiguous, and contradictory." *Exxon Mobil Corp. v. Allapattah Services, Inc.,* 125 S.Ct. 2611, 2626 (2005).

b. **Likewise, what role does or should the advice and analysis of the expert federal agency with jurisdiction over an issue (in this case, the U.S. Copyright Office) have when deciding how to apply the law to the facts in a particular case?**

   Response: If there is binding precedent on the issue, the advice and analysis of the federal agency will not play a role in deciding how to apply the law to the facts of a particular case, as district court judges are bound to follow precedent. In the absence of binding precedent on the issue, and in the context of an agency's interpretation of a statute or regulation, I will apply the framework of analysis set forth by the Supreme Court in cases such as *Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.,* 104 S.Ct. 2778 (1984), *Kisor v. Wilkie*, 139 S.Ct 2400 (2019), *West Virginia v. Environmental Protection Agency,* 142 S.Ct. 2587 (2022), and *Biden v. Nebraska,* 143 S.Ct. 2355 (2023).

c. **Do you believe that awareness of facts and circumstances from which copyright infringement is apparent should suffice to put an online service provider on notice of such material or activities, requiring remedial action?**

   Response: This question is one that could potentially be litigated before me, should I be confirmed; therefore, it would be inappropriate for me to offer an opinion as it could cause parties to believe that I have prejudged the matter which would be a violation of Canon 3(A)(6) of the Code of Conduct for United States Judges.

16. The scale of online copyright infringement is breathtaking. The DMCA was developed at a time when digital content was disseminated much more slowly and there was a lot less infringing material online.

a. How can judges best interpret and apply to today's digital environment laws like the DMCA that were written before the explosion of the internet, the ascension of dominant platforms, and the proliferation of automation and algorithms?

Response: If confirmed, I would employ the framework of analysis set forth by the Supreme Court and the Fifth Circuit in cases involving digital environment laws. It would be inappropriate for me to comment further on the interpretation and application of digital environment laws, as such comments could be construed as a prejudgment of the issues and would not comport with Canon 3(A)(6) of the Code of Conduct for United States Judges.

b. How can judges best interpret and apply prior judicial opinions that relied upon the then-current state of technology once that technological landscape has changed?

Response: If confirmed, I will follow Supreme Court and the Fifth Circuit precedent. It would be inappropriate for me to comment further on the best method of interpretation and application of prior judicial opinions as such comments could be construed as a prejudgment of the issues and would not comport with Canon 3(A)(6) of the Code of Conduct for United States Judges.

17. In some judicial districts, plaintiffs are allowed to request that their case be heard within a particular division of that district. When the requested division has only one judge, these litigants are effectively able to select the judge who will hear their case. In some instances, this ability to select a specific judge appears to have led to individual judges engaging in inappropriate conduct to attract certain types of cases or litigants. I have expressed concerns about this practice.

a. Do you see "judge shopping" and "forum shopping" as a problem in litigation?

Response: The Western District of Louisiana has 5 divisions, 3 of which have only one active judge. Our court has taken action to prevent forum shopping by implementing a system of random allotment of cases to all judges throughout the district regardless of the division of court in which the suit is filed.

b. If so, do you believe that district court judges have a responsibility not to encourage such conduct?

Response: I believe the actions taken by the Western District of Louisiana discourage forum shopping.

c. Do you think it is *ever* appropriate for judges to engage in "forum selling" by proactively taking steps to attract a particular type of case or litigant?

Response: No.

d. If so, please explain your reasoning. If not, do you commit not to engage in such conduct?

Response: I commit not to engage in "forum selling" if I am confirmed.

18. If litigation does become concentrated in one district in this way, is it appropriate to inquire whether procedures or rules adopted in that district have biased the administration of justice and encouraged forum shopping?

Response: I believe that all district courts should be encouraged to adopt some form of the random allotment procedure, such as the kind adopted by the Western District of Louisiana, if they are experiencing the concentration of litigation in a particular division in a manner that raises forum shopping concerns.

19. To prevent the possibility of judge-shopping by allowing patent litigants to select a single-judge division in which their case will be heard, would you support a local rule that requires all patent cases to be assigned randomly to judges across the district, regardless of which division the judge sits in?

Response: See my answer to Question 18.