Senator Dick Durbin
Chair, Senate Judiciary Committee
Written Questions for Judge Charnelle Bjelkengren
Nominee to be United States District Judge for the Eastern District of Washington
February 1, 2023

1. **You have served as a superior court judge since 2019. In this role, you have issued hundreds of decisions and you have presided over approximately 130 jury or bench trials that proceeded to verdict or judgement.**

   Please give a general overview of your role as a superior court judge. What types of cases do you routinely handle?

   Response: In Washington State, Superior Court is a court of general jurisdiction and the highest trial court in the state. As a judge on the Spokane County Superior Court since 2019, I preside over jury trials, bench trials, and motions addressing a vast array of issues under state law including, but not limited to, felony cases (murder, assault, rape, harassment, arson, burglary and more), personal injury, product liability, class actions, dissolution/disassociation of a partnership, contract/commercial collection, consumer protection claims, property disputes, corporate receiverships, condemnation/eminent domain, unlawful detainer, domestic violence protection orders, sexual assault protection orders, injunctions, appeals from lower courts and administrative agencies, dissolution of marriage, legal separation, parenting plans, child support, adoptions, probate matters, trusts/estate dispute resolution, involuntary commitment cases, minor guardianship custody, juvenile shelter care, wage claims, and workers' compensation. As your question references, I have presided over approximately 130 jury or bench trials in less than four years as a state court judge. Additionally, I have conducted hundreds of sentencing hearings.

   Before I became a judge on the Spokane County Superior Court, I served from 2013 to 2019 as an Administrative Law Judge for the Washington State Office of Administrative Hearings. In this capacity, I presided over hearings involving multiple state agencies including the Department of Social and Health Services, the Department of Children Youth and Families, the Employment Security Department, and more. In this judicial capacity, I estimate that I issued over a thousand decisions that were appealable to a commissioner or board, which issued a final order. Finally, I would note that before I became an Administrative Law Judge, the majority of my practice involved litigating appeals from administrative agencies in Superior Court. I estimate I handled more than 150 cases in the Superior Court and the Court of Appeals.

2. **All judicial nominees bring with them to the bench expertise in certain areas of the law. And all of these nominees, once confirmed, must consider and rule on a range of legal issues they have not confronted beforehand in their professional practice.**

   What steps would you take to familiarize yourself with legal issues that you have not previously encountered in your practice?

Response: Due to the vast array of state law issues that are regularly presented to me, I have become adept at learning, analyzing, and applying the law to the facts before me when I encounter a new issue. I believe that these same skills would serve me well if confirmed to the federal bench. I review the briefs submitted by the parties; review the relevant laws, regulations and precedents; and conduct my own independent research. I accomplish the foregoing without assistance, as Superior Court Judges do not have law clerks on staff.

3. **During your confirmation hearing, you were asked questions about several issues that you said were not presented to you as a state assistant attorney general or as a state court judge. Please provide answers in writing to these questions.**

   Response: Article II of the United States Constitution addresses the powers and duties of the executive branch of the federal government, as well as the process for electing the President of the United States.

   Article V governs the process for constitutional amendments. Amendments to the United States Constitution may be proposed by two-thirds of the members of both the House and Senate, or by a Constitutional Convention that is called by two-thirds of the States. Amendments to the United States Constitution may be ratified by three-fourths of State Legislatures or State Ratifying Conventions, whichever method is specifically directed by Congress.

   Purposivism is a method of statutory or constitutional interpretation. Specifically, it is "[t]he doctrine that texts are to be interpreted to achieve the broad purposes that their drafters had in mind; specif., the idea that a judge-interpreter should seek an answer not only in the words of the text but also in its social, economic, and political objectives." Black's Law Dictionary (11th ed. 2019). My own practice as a judge has been to start with the text of the statute or regulation itself, rather than an evaluation of the statute or law's purpose, because the text of the statute or regulation is the best evidence of what its purpose is.

   The independent state legislature doctrine generally interprets Article I, Section 4 of the United States Constitution to give the state legislature exclusive authority to regulate federal elections within that state. This issue is pending before the United States Supreme Court in *Moore v. Harper.*

Senator Lindsey Graham, Ranking Member
Questions for the Record
Judge Charnelle Marie Bjelkengren
Nominee to be United States District Judge, Eastern District of Washington

1. **Please discuss your criminal federal legal experience, including the number of felony cases that you have personally handled, how many misdemeanor cases you have personally handled, how many times you have argued before the court in a criminal matter and how many criminal jury trials you have participated in as lead/co-counsel?**

   Response: In Washington State, Superior Court is a court of general jurisdiction and the highest trial court in the state. As a judge on the Spokane County Superior Court since 2019, I preside over jury trials, bench trials, and motions addressing a vast array of issues under state law including, but not limited to, felony cases (murder, assault, rape, harassment, arson, burglary and more), personal injury, product liability, class actions, dissolution/disassociation of a partnership, contract/commercial collection, consumer protection claims, property disputes, corporate receiverships, condemnation/eminent domain, unlawful detainer, domestic violence protection orders, sexual assault protection orders, injunctions, appeals from lower courts and administrative agencies, dissolution of marriage, legal separation, parenting plans, child support, adoptions, probate matters, trusts/estate dispute resolution, involuntary commitment cases, minor guardianship custody, juvenile shelter care, wage claims, and workers' compensation. I have presided over approximately 130 jury or bench trials in less than four years as a state court judge. Additionally, I have conducted hundreds of sentencing hearings.

   Before I became a judge on the Spokane County Superior Court, I served from 2013 to 2019 as an Administrative Law Judge for the Washington State Office of Administrative Hearings. In this capacity, I presided over hearings involving multiple state agencies including the Department of Social and Health Services, the Department of Children Youth and Families, the Employment Security Department, and more. In this judicial capacity, I estimate that I issued over a thousand decisions that were appealable to a commissioner or board, which issued a final order. Finally, I would note that before I became an Administrative Law Judge, the majority of my practice involved litigating appeals from administrative agencies in Superior Court. I estimate I handled more than 150 cases in the Superior Court and the Court of Appeals.

   In my 12 years as a Washington State Assistant Attorney General and 9 years as a Spokane County Superior Court Judge and Administrative Law Judge, I have not handled criminal cases in federal court. My legal experience is in the Superior Courts and the Courts of Appeals in the State of Washington. Again, as a Superior Court Judge, I have presided over felony jury trials, motions and hundreds of sentencing hearings.

2. **Please discuss your familiarity with the Federal Rules of Criminal Procedure and the United States Sentencing Commission's Advisory Sentencing Guidelines. Specifically:**
   a. **How often have you cited to either of these tomes during the course of your work?**

      Response: In my 12 years as a Washington State Assistant Attorney General and 9 years as a Spokane County Superior Court judge and Administrative Law Judge, I have not had the opportunity to apply the Federal Rules of Criminal Procedure and Sentencing Guidelines. As a Superior Court Judge, I apply the State of Washington Superior Court Criminal Rules and the State of Washington Sentencing Reform Act. Based on my experience, I am confident in my ability to familiarize myself with the federal rules, sentencing guidelines, and applicable Supreme Court and Ninth Circuit precedent.

   b. **How often have you had an opportunity to work within these constructs during the course of your career?**

      Response: See Response to Question 2.a.

3. **How many antitrust cases have you:**
   a. **Personally handled during your legal practice?**
   b. **Presided over in your career as a judge?**

4. **How many social security cases have you:**
   a. **Personally handled during your legal practice?**
   b. **Presided over in your career as a judge?**

5. **How many securities litigation cases have you:**
   a. **Personally handled during your legal practice?**
   b. **Presided over in your career as a judge?**

6. **How many multi-district litigation matters have you:**
   a. **Personally handled during your legal practice?**
   b. **Presided over in your career as a judge?**

7. **How many Racketeer Influenced and Corrupt Organization Act cases have you:**
   a. **Personally handled during your legal practice?**
   b. **Presided over in your career as a judge?**

8. **How many False Claims Act cases have you:**
   a. **Personally handled during your legal practice?**
   b. **Presided over in your career as a judge?**

9. **How many class action suits have you:**

a. **Personally handled during your legal practice?**
b. **Presided over in your capacity as a judge?**

10. **How many §1983 suits have you:**
    a. **Personally handled during your legal practice?**
    b. **Presided over in your capacity as a judge?**

11. **How many copyright cases have you:**
    a. **Personally handled during your legal practice?**
    b. **Presided over in your career as a judge?**

12. **How many patent cases have you:**
    a. **Personally handled during your legal practice?**
    b. **Presided over in your career as a judge?**

13. **How many federal Indian law cases have you:**
    a. **Personally handled during your legal practice?**
    b. **Presided over in your career as a judge?**

14. **How many driver's license revocation hearings have you:**
    a. **Personally handled during your legal practice?**

       Response: approximately 150

    b. **Presided over in your capacity as a judge?** Response: 1

Response to Questions 3 –14: As I disclosed in my Senate Judiciary Questionnaire, 98% of my practice as an attorney was in state courts and 100% was in civil proceedings. As a result, I did not handle cases that arose under federal laws, such as 42 U.S.C. § 1983, federal Indian law, the federal Racketeer Influenced and Corrupt Organization Act, or the False Claims Act. As a Washington State Administrative Judge and as a Spokane County Superior Court Judge, I have presided over thousands of matters including felony criminal trials and criminal sentencings. I have presided over two class action lawsuits and one case that involved federal Indian law related issues. I have a proven ability to get up to speed on a wide variety of legal issues as a Superior Court Judge, including state criminal law issues, which I did not have familiarity with as an advocate. This should reassure the Committee of my ability to get up to speed in new areas of federal law, if confirmed to the United States District Court for the Eastern District of Washington.

15. **Please discuss your familiarity with the Federal Rules of Evidence. Specifically:**
    a. **How often have you cited to these rules during your legal practice?**

       Response: In my 12 years as a Washington State Assistant Attorney General, I do not recall citing the Federal Rules of Evidence. I am confident in my ability to

familiarize myself with the rules as they are similar to the Washington Rules of Evidence.

b. **How often have you cited to these rules during your career as a judge?**

Response: I cite the Washington Rules of Evidence, which are similar to the Federal Rules of Evidence, nearly daily as a judge.

c. **With the experience you outlined above, please explain how you intend to oversee a trial within the federal judicial system.**

Response: I am a sitting judge on the highest trial court in the state of Washington, which is a court of general jurisdiction. I have presided over 130 trials, hundreds of motions, and sentencing hearings. Due to the vast array of issues that are presented to me, I have become adept at learning, analyzing, and applying the law to the facts before me when I encounter a new issue. I thoroughly review the record, the laws cited by the parties, consider the arguments, and conduct my own independent research. I accomplish the foregoing without assistance, as superior court judges do not have law clerks on staff. I would apply these methods in presiding over trials in federal court, if I am confirmed.

16. **Under Supreme Court and Ninth 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: A "fact" is defined as "1. Something that actually exists; an aspect of reality …. Facts include not just tangible things, actual occurrences, and relationships, but also states of mind such as intentions and the holding of opinions. 2. An actual or alleged event or circumstance, as distinguished from its legal effect, consequence, or interpretation." Black's Law Dictionary (11th ed. 2019). Similarly, the Supreme Court has reasoned "findings as to the design, motive and intent with which men act [are] peculiarly factual issues for the trier of fact" *Pullman-Standard v. Swint*, 456 U.S. 273, 288 (1982) (internal quotation marks omitted). Questions of fact require a review of the totality of the record. Questions of law require application of an objective legal standard. *Ornelas v. United States*, 517 U.S. 690 (1996). The standard for appellate review for findings of fact is clearly erroneous and questions of law are reviewed *de novo*. *Id.*

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

Response: I am guided by precedent and the specific facts that are presented to me in distinguishing between attacks and mere criticism of an opinion issued by a sitting judge.

18. **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: 18 U.S.C. § 3553(a) directs the court to consider the purposes of retribution, deterrence, incapacitation and rehabilitation when imposing a sentence. I am unaware of any Supreme Court or Ninth Circuit precedent directing the court to give greater weight to any specific principle.

19. **In what situation(s) does qualified immunity not apply to a law enforcement officer in Washington?**

    Response: "The doctrine of qualified immunity protects government officials from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Pearson v. Callahan*, 129 S. Ct. 808, 815 (2009) (internal quotation marks and citation omitted). "Whether an official protected by qualified immunity may be held personally liable for an allegedly unlawful official action generally turns on the 'objective legal reasonableness' of the action assessed in light of the legal rules that were 'clearly established' at the time it was taken." *Anderson v. Creighton*, 483 U.S. 635, 639 (1987) (citations omitted). If confirmed, I would follow all Supreme Court and Ninth Circuit precedent regarding qualified immunity.

    In Washington, qualified immunity is not "available for claims of assault and battery arising out of the use of excessive force to effectuate an arrest." *Staats v. Brown*, 139 Wash.2d 757, 779 (2000). Similarly, qualified immunity does not apply to an arrest amounting to a statutory violation. *Id.*

20. **Please explain your understanding of 18 U.S.C. § 1507 and what conduct it prohibits.**

    Response: 18 U.S.C. § 1507 generally prohibits picketing in or near a court or residence of a judge, witness, juror, or other court officer with the intent to interfere with the administration of justice or attempt to influence a judge, witness, juror, or other court officer.

21. **Under Supreme Court precedent, is 18 U.S.C. § 1507, or a state statute modeled on § 1507, constitutional on its face?**

    Response: I do not believe there is Supreme Court precedent addressing the constitutionality of 18 U.S.C. § 1507.

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

Response: In *Chaplinsky v. New Hampshire*, 315 U.S. 568, 571-72 (1942), the Supreme Court reasoned, "There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or 'fighting words' - those which by their very utterance inflict injury or tend to incite an immediate breach of the peace."

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

    Response: In *Virginia v. Black*, 538 U.S. 343, 359-60 (2003) (internal quotation marks and citations omitted), the Supreme Court reasoned, "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. The speaker need not actually intend to carry out the threat. Rather, a prohibition on true threats protects individuals from the fear of violence and the disruption that fear engenders, as well as from the possibility that the threatened violence will occur." Any ban on true threats must be content neutral. It is unconstitutional to ban only certain threats that are "directed toward one of the specified disfavored topics." *Id*. at 362 (internal quotation marks and citation omitted).

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

    Response: I have spent the last 9 years as an Administrative Law Judge and Spokane County Superior Court Judge. As a Superior Court Judge my judicial philosophy is to approach each case impartially, with an open mind and without prejudgment. I closely review the record, thoroughly research the applicable law, apply the law to the facts and in this way decide each case that comes before me. I issue decisions that are fair and free of bias, treating all participants with respect and dignity. I strive to treat each case as though it is the most important case because to the parties it is the most important case I will decide. If confirmed, this would continue to be my judicial philosophy. There is no single U.S. Supreme Court decision from the last 50 years that is most indicative of my philosophy.

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

    Response: As a Superior Court Judge my judicial philosophy is to approach each case impartially, with an open mind and without prejudgment. I closely review the record, thoroughly research the applicable law, apply the law to the facts and in this way decide each case that comes before me. I issue decisions that are fair and free of bias, treating all participants with respect and dignity. I strive to treat each case as though it is the most important case because to the parties it is the most important case I will decide. If confirmed, this would continue to be my judicial philosophy. There is no single Ninth Circuit decision from the last 50 years that is most indicative of my philosophy.

26. **Please state the governing law for self-defense in Washington and the Ninth Circuit.**

    Response: In the Ninth Circuit, "Use of force is justified when a person reasonably believes that it is necessary for the defense of oneself or another against the immediate use of unlawful force. However, a person must use no more force than appears reasonably necessary under the circumstances." *Manual of Model Criminal Jury Instructions* (9th Cir. 2019).

    Generally, in Washington, self-defense is the use of force on the person of another, when used by a person who reasonably believes that they are about to be injured, and the force is not more than necessary. The person using force may employ such force and means as a reasonably prudent person would use, under the same or similar conditions as they appeared to the person, taking into consideration all of the facts and circumstances known to the person at the time of the incident. *See Washington Pattern Instruction 17.02 Lawful Force – Defense of Self, Others, Property.*

    An attempt to use force can also constitute self-defense. Lawfully aiding someone who is about to be injured can constitute self-defense. The use of force in preventing a malicious trespass or other malicious interference with property can constitute self-defense. The state has the burden of proving the absence of self-defense for assault charges. *State v. Acosta*, 101 Wn.2d 612 (Wash.1984).

27. **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?**

       Response: Yes. The Code of Conduct for United States Judges, Canon 3.A.(6) and the Code of Judicial Conduct for Washington Judges, Canon 2, Rule 2.10 prohibit me from commenting on a matter that could come before me. I want all parties that appear before me to be assured that I have not prejudged their case. However, it is unlikely that the facts of *Brown v. Board of Education* would come before me as the unconstitutionality of segregation is well settled law. Accordingly, I can say that it was correctly decided.

    b. **Was *Loving v. Virginia* correctly decided?**

       Response: Yes. The Code of Conduct for United States Judges, Canon 3.A.(6) and the Code of Judicial Conduct for Washington Judges, Canon 2, Rule 2.10 prohibit me from commenting on a matter that could come before me. I want all parties that appear before me to be assured that I have not prejudged their case. However, it is unlikely that the facts of *Loving v. Virginia* would come before me as the unconstitutionality of a ban on inter-racial marriage is well settled law. Accordingly, I can say that it was correctly decided.

c. **Was *Griswold v. Connecticut* correctly decided?**

Response: As a sitting judge and nominee, the Code of Conduct for United States Judges, Canon 3.A.(6) and the Code of Judicial Conduct for Washington Judges, Canon 2, Rule 2.10 prohibit me from offering my personal opinion on whether a matter was correctly decided. Further, I want all parties that appear before me to be assured that I have not prejudged their case. If confirmed, I will apply all Supreme Court and Ninth Circuit precedent to the cases that come before me.

d. **Was *Roe v. Wade* correctly decided?**

Response: As a sitting judge and nominee, the Code of Conduct for United States Judges, Canon 3.A.(6) and the Code of Judicial Conduct for Washington Judges, Canon 2, Rule 2.10 prohibit me from offering my personal opinion on whether a matter was correctly decided. The Supreme Court overturned *Roe v. Wade* in *Dobbs v. Jackson Women's Health Organization,* 142 S. Ct 2228 (2022). If confirmed, I will apply all Supreme Court and Ninth Circuit precedent to the cases that come before me.

e. **Was *Planned Parenthood v. Casey* correctly decided?**

Response: As a sitting judge and nominee, the Code of Conduct for United States Judges, Canon 3.A.(6) and the Code of Judicial Conduct for Washington Judges, Canon 2, Rule 2.10 prohibit me from offering my personal opinion on whether a matter was correctly decided. The Supreme Court overturned *Planned Parenthood v. Casey* in *Dobbs v. Jackson Health Organization,* 142 S. Ct 2228 (2022). If confirmed, I will apply all Supreme Court and Ninth Circuit precedent to the cases that come before me.

f. **Was *Gonzales v. Carhart* correctly decided?**

Response: As a sitting judge and nominee, the Code of Conduct for United States Judges, Canon 3.A.(6) and the Code of Judicial Conduct for Washington Judges, Canon 2, Rule 2.10 prohibit me from offering my personal opinion on whether a matter was correctly decided. Further, I want all parties that appear before me to be assured that I have not prejudged their case. If confirmed, I will apply all Supreme Court and Ninth Circuit precedent to the cases that come before me.

g. **Was *District of Columbia v. Heller* correctly decided?**

Response: As a sitting judge and nominee, the Code of Conduct for United States Judges, Canon 3.A.(6) and the Code of Judicial Conduct for Washington Judges, Canon 2, Rule 2.10 prohibit me from offering my personal opinion on whether a matter was correctly decided. Further, I want all parties that appear before me to

be assured that I have not prejudged their case. If confirmed, I will apply all Supreme Court and Ninth Circuit precedent to the cases that come before me.

h. **Was *McDonald v. City of Chicago* correctly decided?**

Response: As a sitting judge and nominee, the Code of Conduct for United States Judges, Canon 3.A.(6) and the Code of Judicial Conduct for Washington Judges, Canon 2, Rule 2.10 prohibit me from offering my personal opinion on whether a matter was correctly decided. Further, I want all parties that appear before me to be assured that I have not prejudged their case. If confirmed, I will apply all Supreme Court and Ninth Circuit precedent to the cases that come before me.

i. **Was *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* correctly decided?**

Response: As a sitting judge and nominee, the Code of Conduct for United States Judges, Canon 3.A.(6) and the Code of Judicial Conduct for Washington Judges, Canon 2, Rule 2.10 prohibit me from offering my personal opinion on whether a matter was correctly decided. Further, I want all parties that appear before me to be assured that I have not prejudged their case. If confirmed, I will apply all Supreme Court and Ninth Circuit precedent to the cases that come before me.

j. **Was *New York State Rifle & Pistol Association v. Bruen* correctly decided?**

Response: As a sitting judge and nominee, the Code of Conduct for United States Judges, Canon 3.A.(6) and the Code of Judicial Conduct for Washington Judges, Canon 2, Rule 2.10 prohibit me from offering my personal opinion on whether a matter was correctly decided. Further, I want all parties that appear before me to be assured that I have not prejudged their case. If confirmed, I will apply all Supreme Court and Ninth Circuit precedent to the cases that come before me.

k. **Was *Dobbs v. Jackson Women's Health* correctly decided?**

Response: As a sitting judge and nominee, the Code of Conduct for United States Judges, Canon 3.A.(6) and the Code of Judicial Conduct for Washington Judges, Canon 2, Rule 2.10 prohibit me from offering my personal opinion on whether a matter was correctly decided. Further, I want all parties that appear before me to be assured that I have not prejudged their case. If confirmed, I will apply all Supreme Court and Ninth Circuit precedent to the cases that come before me.

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

Response: In *New York State Rifle & Pistol Association v. Bruen*, 142 S. Ct. 2111, 2126 (2022) *citing District of Columbia v. Heller*, 128 S. Ct 2783 (2008), the Supreme Court held "when the Second Amendment's plain text covers an individual's conduct, the

Constitution presumptively protects the conduct. To justify its regulation, . . . the government must demonstrate that the regulation is consistent with the Nation's historical tradition of firearm regulation."

29. **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.

30. **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.

31. **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.

32. **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.

33. **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.

34. **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, 2021, I submitted my application to the nonpartisan Judicial Merit Selection Committee established by Senators Maria Cantwell and Patty Murray. On March 25, 2021, I interviewed with the Judicial Merit Selection Committee. I was notified that my name was forwarded by the committee to the senators. On April 19, 2021, I interviewed with Senator Cantwell's representatives. On April 20, 2021, I interviewed with Senator Murray's representatives. On May 13, 2021, I interviewed with Senator Murray. Senator Murray's office notified me that my name was forwarded to the White House. On May 26, 2021, I interviewed with attorneys from the White House Counsel's Office. On June 11, 2022, I was contacted by an attorney from the White House Counsel's Office regarding my interest in being considered for potential nomination to Eastern District of Washington. Since that date, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On September 19, 2022, my nomination was submitted to the Senate.

35. **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.

36. **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.

37. **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.

38. **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.

39. **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.

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

    Response: On May 26, 2021, I interviewed with attorneys from the White House Counsel's Office. On June 11, 2022, I was contacted by an attorney from the White House Counsel's Office regarding my interest in being considered for a potential nomination to the Eastern District of Washington. On approximately September 1, 2022, I was notified by the White House Counsel's Office about the President's intent to nominate me.

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

    Response: I reviewed the questions, conducted research and consulted my records, when necessary. After completing my answers, I sent a draft to the Department of Justice's Office of Legal Policy (OLP). After I received feedback from OLP, I finalized responses for submission to the Senate Judiciary Committee.

Senator Mike Lee
Questions for the Record
Charnelle Bjelkengren, Nominee to the United States District Court for the Eastern District of Washington

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

   Response: As a Superior Court Judge my judicial philosophy is to approach each case impartially, with an open mind and without prejudgment. I closely review the record, thoroughly research the applicable law, apply the law to the facts and in this way decide each case that comes before me. I issue decisions that are fair and free of bias, treating all participants with respect and dignity. I strive to treat each case as though it is the most important case because to the parties their case is the most important case I will decide. If confirmed, this would continue to be my judicial philosophy.

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

   Response: When interpreting a federal statute, I would look to the text of the statute and apply any binding Supreme Court and Ninth Circuit precedent. If there is no binding precedent, I would look to other circuit courts' interpretation of the statute at issue and consider canons of statutory construction. As a last resort, I might look to legislative history, but only to the extent the Supreme Court has authorized and being mindful of the types of legislative history that the Supreme Court has found most relevant.

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

   Response: When interpreting a constitutional provision, I would apply Supreme Court and Ninth Circuit precedent, including the method of interpretation the courts have used. For example, the Supreme Court has applied the original public meaning of the Second Amendment in *Heller, McDonald,* and *Bruen*. "Constitutional rights are enshrined with the scope they are understood to have *when the people adopted them*." *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111, 2136 (2022) (quoting *District of Columbia v. Heller*, 554 U.S. 570, 634-35 (2008)).

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

   Response: The Supreme Court has applied the original public meaning of the Second Amendment in *Heller, McDonald*, and *Bruen*. "Constitutional rights are enshrined with the scope they are understood to have w*hen the people adopted them*." *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111, 2136 (2022) (quoting *District of Columbia v. Heller*, 554 U.S. 570, 634-35

(2008)). If confirmed, I will apply Supreme Court and Ninth Circuit precedent when interpreting provisions of the Constitution.

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 review the text of a statute as that is the best indicator of the legislature's intent. I would give the plain meaning of a text great weight, together with Supreme Court and Ninth Circuit precedent.

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: In *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008), the Supreme Court reasoned that the plain meaning of the Second Amendment referred to the original public understanding of the amendment at the time of enactment. I would rely on precedent to interpret a statute or constitutional provision consistent with the Supreme Court and Ninth Circuit's interpretation.

6. **What are the constitutional requirements for standing?**

Response: Article III, Section 2 of the Constitution provides that federal courts have jurisdiction over cases and controversies. Standing requires 1) an injury in fact that is concrete and particularized, 2) the injury must be traceable to the alleged conduct, and 3) likely to be redressable by relief the court can order in a favorable decision.

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

Response: According to Article I, Section 8 of the Constitution, Congress has those powers enumerated in the Constitution and the power to make laws necessary and proper for carrying out its enumerated powers. Further, *McCullough v. Maryland,* 17 U.S. 316 (1819), held that the Constitution grants congress implied powers (for example, establish a national bank) in order to implement its express powers (for example, taxation and spending).

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

Response: I would apply applicable Supreme Court and Ninth Circuit precedent to evaluate the constitutionality of a law that Congress enacts.

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

Response: Yes. In *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997), the Supreme Court reasoned, "First, we have regularly observed that the Due Process Clause specially protects those fundamental right and liberties which are, objectively, deeply rooted in this Nation's history and tradition, and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed. Second, we have required in substantive due-process cases a careful description of the asserted fundamental liberty interest. Our Nation's history, legal traditions, and practices thus provide the crucial guideposts for responsible decision making that direct and restrain our exposition of the Due Process Clause." (internal quotation marks and citations omitted).

These rights include, but are not limited to, the right to marry, have children, direct the education and upbringing of one's children, marital privacy, use of contraception, and bodily integrity. *Id.* at 720.

10. What rights are protected under substantive due process?

Response: See Response to Question 9.

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: In *Dobbs v. Jackson Women's Health Organization,* 142 S. Ct 2228 (2022), the Supreme Court held that abortion is not protected by the Due Process Clause of the Fourteenth Amendment. Similarly, *Lochner v. New York* is no longer binding precedent after the Supreme Court upheld the State of Washington's minimum wage legislation in *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937). If presented with this issue, I would apply binding Supreme Court and Ninth Circuit precedent.

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

Response: Article I, Section 8 of the Constitution, grants Congress the power "to regulate commerce with foreign Nations, and among, the several States and with the Indian Tribes." The Supreme Court has held that Congress may "regulate the use of channels of interstate commerce," "the instrumentalities of interstate commerce, or persons or things in interstate commerce," and "those activities having a substantial relation to interstate commerce," "or substantially affect interstate commerce." *United States v. Lopez,* 514 U.S. 549, 558-59 (1995). Generally, Congress' power to regulate commerce prevents regulation of non-economic activity that does not burden commerce.

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

Response: Suspect classes include race, religion, national origin, alienage and fundamental rights. *City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976). In determining whether a particular group qualifies as a suspect class, the Supreme Court has considered factors such as whether a group has historically been subjected to discrimination, "exhibit[s] obvious, immutable, or distinguishing characteristics that define them as a discrete group" and are "a minority or politically powerless." *Bowen v. Gilliard*, 483 U.S. 587, 602 (1987).

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

Response: Both checks and balances and separation of powers are crucial to the Constitution's structure and our democracy. For example, Article III standing prevents the judicial branch from usurping the powers of the legislative and executive branches. Similarly, the rule against advisory opinions "ensures that federal judicial power is limited to those disputes which confine federal courts to a rule consistent with a system of separated powers and which are traditionally thought to be capable of resolution through the judicial process." *Center for Biological Diversity v. United States Forest Service*, 925 F.3d 1041, 1047 (9th Cir. 2019) (internal quotation marks and citations omitted).

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 consider the specific facts presented and apply Supreme Court and Ninth Circuit precedent.

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

Response: A judge's personal views should play no role in deciding a case. As a sitting judge, I treat all participants with respect and dignity, and if confirmed, would continue to do so.

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

Response: Neither is a proper result. When reviewing the constitutionality of a law, I would apply Supreme Court and Ninth Circuit precedent.

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 thoroughly studied the extent of judicial review in various time periods. My personal views on the downsides of aggressive judicial review or judicial passivity are not relevant to my decision making. In reviewing the constitutionality of a statute, I would be guided not by trends, but by precedent. In reviewing the constitutionality of a statute, I would faithfully apply Supreme Court and Ninth Circuit precedent.

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

Response: Judicial review is defined as "A court's power to review the actions of other branches or levels of government." Black's Law Dictionary (11th ed. 2019). Judicial supremacy is defined as "The 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." *Id*.

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: In *Marbury v. Madison*, 5 U.S. 137 (1803), the Supreme Court held that while the legislature has the power to create the law, the court shall interpret the law. Accordingly, the Supreme Court is the chief interpreter of the Constitution. The separation of powers and checks and balances acknowledges each branch honoring the role of the other branches of government.

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: Judges are governed by the rule of law. It is of the utmost importance that judges not be influenced by their personal views, "partisan interests, public clamor, or fear of criticism" when issuing decisions. *See* Code of Conduct for United States Judges, Canon 3.A.(1). Further, judges should be careful to only decide the precise issue presented. I keep this in mind when issuing decisions and would continue to do so, if confirmed.

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: The lower court has a duty to apply all binding precedent. The Supreme Court may overturn its own precedent and considers five factors when doing so: the nature of the error, the quality of the reasoning, the workability of the rules the precedent imposes, the disruptive effect on other areas of law, and reliance interests. *Dobbs v. Jackson Women's Health Organization,* 142 S. Ct 2228, 2265 (2022), *citing Janus v. State, County, and Municipal Employees*, 138 S. Ct. 2448 (2018). If confirmed, I will faithfully apply all Supreme Court and Ninth Circuit precedent.

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: It should play no role. If confirmed, my sentencing analysis would be limited to the factors outlined in 18 U.S.C. § 3553, the United States Sentencing Commission's Sentencing Guidelines, and any Supreme Court and Ninth Circuit precedent.

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 am not aware of the statement made by the Biden Administration regarding equity. As a judge, my personal views play no part in my legal analysis or decision making. Equity is defined as, "Fairness; impartiality; evenhanded dealing." Black's Law Dictionary (11th ed. 2019).

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

Response: Equality means, "The quality, state, or condition of being equal; esp., likeness in power or political status." Black's Law Dictionary (11th ed. 2019). These definitions are different.

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

Response: The Fourteenth Amendment's Equal Protection Clause states, "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." The text of the Fourteenth Amendment does not address equity.

27. How do you define "systemic racism?"

Response: I do not have a personal definition of systemic racism. Racism is defined as: "1. The belief that some races are inherently superior to other races. 2. Unfair treatment of people, often including violence against them, because they belong to a different race from one's own." Black's Law Dictionary (11th ed. 2019). If confirmed as a federal district judge, if claims involving race discrimination come before me, I will review the facts of the case and apply binding Supreme Court and Ninth Circuit precedent.

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

Response: I do not have a personal definition of critical race theory. It is defined as: "A reform movement within the legal profession, particularly within academia, whose adherents believe that the legal system has disempowered racial minorities. Critical race theorists observe that even if the law is couched in neutral language, it cannot be neutral because those who fashioned it had their own subjective perspectives that, once enshrined in law, have disadvantaged minorities and even perpetuated racism." Black's Law Dictionary (11th ed. 2019).

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

Response: See response to Questions 27 and 28.

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

<u>Questions for the Record for Charnelle Bjelkengren, nominated to be United States District Judge for the Eastern District of Washington</u>

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: Both the Constitution and numerous federal laws prohibit racial discrimination. Any laws that discriminate based upon race, which is a suspect class, are subject to strict scrutiny. Accordingly, the law must be narrowly tailored to achieve a compelling government interest. If presented with a case involving racial discrimination, I would apply Supreme Court and Ninth Circuit precedent to the specific facts of the case.

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

Response: A facially neutral and generally applicable governmental action will not trigger strict scrutiny. However, if the governmental action is not neutral and generally applicable, courts should apply strict scrutiny. *Kennedy v. Bremerton School District,* 142 S. Ct. 2407 (2022). Under a strict scrutiny analysis, the government action must be narrowly tailored to accomplish a compelling government interest.

"A government policy will not qualify as neutral if it is specifically directed at . . . religious practice. A policy can fail this test if it discriminate[s] on its face, or if a religious exercise is otherwise its object. A government policy will fail the general applicability requirement if it prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way, or if it provides a mechanism for individualized exemptions." *Kennedy v. Bremerton School District,* 142 S. Ct. 2407, 2422 (2022) (internal quotation marks and citations omitted); *See also Masterpiece Cakeshop, LTD v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2018); *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014).

In addition, I would note that the federal government is subject to the Religious Freedom Restoration Act, which holds that even neutral and generally applicable laws are subject to strict scrutiny if they impose a substantial burden on religion. If presented with a case involving religious discrimination, I would apply Supreme Court and Ninth Circuit precedent to the specific facts of the case.

3. **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.

4. **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: I am not familiar with the trainings offered by the federal court for the Eastern District of Washington and whether I am a decisionmaker in determining what is offered.

5. **Will you commit that you will not engage in racial discrimination when selecting and hiring law clerks and other staff, should you be confirmed?**

Response: Yes.

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

Response: The Code of Conduct for United States Judges, Canon 3.A.(6) and the Code of Judicial Conduct for Washington Judges, Canon 2, Rule 2.10 prohibit me from commenting on a matter that could come before me. I want all parties who appear before to be assured that I have not prejudged their case.

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

Response: This is an issue for the policymakers to address, if they so choose. As a sitting judge, I apply precedent to the facts before me in an impartial and unbiased manner. If confirmed, I will continue to do so.

8. **President Biden has created a commission to advise him on reforming the U.S. Supreme Court. Do you believe that Congress should increase, or decrease, the**

number of justices on the U.S. Supreme Court? Please explain.

Response: This is an issue for the Congress to address, if it so chooses. If confirmed, I will faithfully apply all Supreme Court precedent to the facts before me, without regard to the number of justices on the court.

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

Response: No.

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

Response: Yes, the Court in *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008), held the Second Amendment confers an individual right to own a firearm.

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

Response: No. “The constitutional right to bear arms in public for self-defense is not a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.” *New York Rifle and Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111, 2156 (2022) (internal quotation marks and citation omitted).

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

Response: No. “The constitutional right to bear arms in public for self-defense is not a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.” *New York Rifle and Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111, 2156 (2022) (internal quotation marks and citation omitted).

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

Response: No.

14. **Are there instances where a judge should not honor the judicial code of conduct?**

Response: Federal judges are bound by the Code of Conduct for United States Judges. The Commentary in the Code of Conduct states, “The Code is to be construed so it does not impinge on the essential independence of judges in making decisions.”

a. **If so, can you please identify all instances?**

Response: As a judge I am first and foremost committed to the rule of law. If the

code of conduct was in conflict with Supreme Court or Ninth Circuit precedent, I would follow precedent.

b. **What justifies a departure from the judicial code of conduct?**

Response: See Response to Question 14.a.

15. **What is the cause of the systemic racial injustice you referenced in the Personal and Professional Commitment to Equality on behalf of the Spokane Superior Court?**

Response: The Personal and Professional Commitment to Equality on behalf of the Spokane Superior Court was intended to reference, for example, the system of chattel slavery that legally existed in the United States until 1865, Jim Crow laws, and other laws that maintained de jure segregation and discrimination throughout our Nation's history. The letter was prompted by the killing of George Floyd.

16. **Are the racist actors or institutions in the criminal justice system?**

Response: I am not personally aware of any racist actors or institutions in the criminal justice system. This is a question for the policymakers to address, if they so choose.

a. **If so, can you please identify and list those actors or institutions.**

Response: See Response to Question 16.

17. **Is there need for systemic reform in the criminal justice system?**

Response: As a sitting judge, it is my role to apply legal precedent to the facts that are presented to me. I do so fairly, impartially and without bias. Identifying and fixing flaws in the criminal justice system is the role of the legislature.

a. **If so, please identify the reforms you believe are necessary.**

Response: See Response to Question 17.

18. **Are judges "change agents" or neutral arbiters of the law?**

Response: As a sitting judge, I am a neutral arbiter of the law. Above all else, I am committed to the rule of law. If confirmed, I will maintain that commitment.

19. **Please list the matters you have litigated in federal court.**

Response: In Washington State, Superior Court is a court of general jurisdiction and the highest trial court in the state. As a judge on the Spokane County Superior Court since

2019, I preside over jury trials, bench trials, and motions addressing a vast array of issues under state law including, but not limited to, felony cases (murder, assault, rape, harassment, arson, burglary and more), personal injury, product liability, class actions, dissolution/disassociation of a partnership, contract/commercial collection, consumer protection claims, property disputes, corporate receiverships, condemnation/eminent domain, unlawful detainer, domestic violence protection orders, sexual assault protection orders, injunctions, appeals from lower courts and administrative agencies, dissolution of marriage, legal separation, parenting plans, child support, adoptions, probate matters, trusts/estate dispute resolution, involuntary commitment cases, minor guardianship custody, juvenile shelter care, wage claims, and workers' compensation. As your question references, I have presided over approximately 130 jury or bench trials in less than four years as a state court judge. Additionally, I have conducted hundreds of sentencing hearings.

Before I became a judge on the Spokane County Superior Court, I served from 2013 to 2019 as an Administrative Law Judge for the Washington State Office of Administrative Hearings. In this capacity, I presided over hearings involving multiple state agencies including the Department of Social and Health Services, the Department of Children Youth and Families, the Employment Security Department, and more. In this judicial capacity, I estimate that I issued over a thousand decisions that were appealable to a commissioner or board that issued a final order. Finally, I would note that before I became an Administrative Law Judge, the majority of my practice involved litigating appeals from administrative agencies in Superior Court. I estimate I handled more than 150 cases in the Superior Court and the Court of Appeals. As I disclosed in my Senate Judiciary Questionnaire, 98% of my practice as an attorney was in state courts and 100% was in civil proceedings.

20. **Please list all of the trials that you have personally tried to a jury.**

I have presided over approximately 130 jury or bench trials in less than four years as a state court judge. Additionally, I have conducted hundreds of sentencing hearings.

Before I became a judge on the Spokane County Superior Court, I served from 2013 to 2019 as an Administrative Law Judge for the Washington State Office of Administrative Hearings. In this capacity, I presided over hearings involving multiple state agencies including the Department of Social and Health Services, the Department of Children Youth and Families, the Employment Security Department, and more. In this judicial capacity, I estimate that I issued over a thousand decisions that were appealable to a commissioner or board that issued a final order. Finally, I would note that before I became an Administrative Law Judge, the majority of my practice involved litigating appeals from administrative agencies in Superior Court. I estimate I handled more than 150 cases in the Superior Court and the Court of Appeals.

Before I became a judge 9 years ago, in my 12 years as a Washington State Assistant Attorney General, I did not try a case before a jury.

21. **As a litigator, what percentage of your cases were devoted to driver's license revocations?**

Response: I have presided over approximately 130 jury or bench trials in less than four years as a state court judge. Additionally, I have conducted hundreds of sentencing hearings.

Before I became a judge on the Spokane County Superior Court, I served from 2013 to 2019 as an Administrative Law Judge for the Washington State Office of Administrative Hearings. In this capacity, I presided over hearings involving multiple state agencies including the Department of Social and Health Services, the Department of Children Youth and Families, the Employment Security Department, and more. In this judicial capacity, I estimate that I issued over a thousand decisions that were appealable to a commissioner or board that issued a final order. Before I became an Administrative Law Judge, the majority of my practice involved litigating appeals from administrative agencies in Superior Court. I estimate I handled more than 150 cases in the Superior Court and the Court of Appeals. Approximately 70-80% of these cases were related to driver's license revocations.

22. **Can a person be transracial in the eyes of federal law? That is, can a person, on a federal government form, legally identify themselves as belonging to an ethnic group they do not belong to, without committing perjury?**

Response: I am not aware of any precedent addressing this issue. The Code of Conduct for United States Judges, Canon 3.A.(6) and the Code of Judicial Conduct for Washington Judges, Canon 2, Rule 2.10 prohibit me from commenting on a matter that could come before me. I want all parties that appear before me to be assured that I have not prejudged their case.

Senator Josh Hawley
Questions for the Record

Judge Charnelle Bjelkengren
Nominee, U.S. District Court for the Eastern District of Washington

1. **Then-Judge Ketanji Brown Jackson made a practice of refusing to apply several enhancements in the Sentencing Guidelines when sentencing child pornography offenders. Please explain whether you agree with each of the following Guidelines enhancements and whether, if you are confirmed, you intend to use them to increase the sentences imposed on child pornography offenders.**

    a. **The enhancement for material that involves a prepubescent minor or a minor who had not attained the age of 12 years**

    b. **The enhancement for material that portrays sadistic or masochistic conduct or other depictions of violence**

    c. **The enhancement for offenses involving the use of a computer**

    d. **The enhancements for the number of images involved**

    Response to all subparts: If confirmed, when making sentencing decisions, I will consider the factors identified in 18 U.S.C. § 3553; the Sentencing Guidelines, including any sentencing enhancements; the recommendations of the prosecution, defense, and probation office; and Supreme Court and Ninth Circuit precedent.

2. **Federal law currently has a higher penalty for distribution or receipt of child pornography than for possession. It's 5-20 years for receipt or distribution. It's 0-10 years for possession. The Commission has recommended that Congress align those penalties, and I have a bill to do so.**

    a. **Do you agree that the penalties should be aligned?**

    b. **If so, do you think the penalty for possession should be increased, receipt and distribution decreased, or a mix?**

    c. **If an offender before you is charged only with possession even though uncontested evidence shows the offender also committed the crime of receiving child pornography, will you aim to sentence the offender to between 5 and 10 years?**

Response to all subparts: The question of whether these penalties should be aligned is a question for policymakers. As a judge, I am bound to sentence individuals based on current law. If confirmed, I will apply Supreme Court and Ninth Circuit precedent to the facts of the case, including any changes to the sentencing guidelines should they be enacted.

3. **Justice Marshall famously described his philosophy as "You do what you think is right and let the law catch up."**

   a. **Do you agree with that philosophy?**

   Response: As a sitting judge, I am first and foremost committed to the rule of law. I do not insert my personal views into my decision-making analysis.

   b. **If not, do you think it is a violation of the judicial oath to hold that philosophy?**

   Response: I am not familiar with the context in which this statement was made. However, to the extent that a judge does not commit to upholding the Constitution and binding precedent, it is a violation of the judicial oath.

4. **Do you believe that the Supreme Court's ruling in *Dobbs v. Jackson Women's Health Organization* is settled law?**

   Response: Yes.

5. **What is the standard for each kind of abstention in the court to which you have been nominated?**

   Response: The abstention doctrines identify exceptions to federal court jurisdiction and are named after the Supreme Court case establishing the doctrine.

   Pullman abstention is "appropriate where (1) the federal constitutional claim touches a sensitive area of social policy, (2) constitutional adjudication plainly can be avoided [or narrowed by] a definitive ruling by a state court, and (3) a possibly determinative issue of state law is doubtful." *Gearing v. City of Half Moon Bay*, 54 F.4th 1144, 1147 (9th Cir. 2022) (internal quotation marks and citations omitted).

   Burford abstention permits "a court to decline to rule on an essentially local issue arising out of a complicated state regulatory scheme." *Knudsen Corp v. Nevada State Dairy Com'n*, 676 F.2d 374, 376 (1982). Applicability of *Burford* abstention requires "first, that the state has chosen to concentrate suits challenging the actions of the agency involved in a particular court; second, that federal issues could not be separated easily from complex state law issues with respect to which state courts

might have special competence; and third, that federal review might disrupt state efforts to establish a coherent policy." *Id.* at 377 (citations omitted). The Ninth Circuit "has been careful to avoid extending *Burford*." *Id.*

Younger abstention "applies when there is a pending state proceeding that implicates important state interests and provides the federal plaintiff with an opportunity to raise federal claims" and "the federal relief sought must interfere in some manner with the state litigation." *Baffert v. California Horse Racing Bd.*, 332 F.3d 613, 616 (9th Cir. 2003) (citations omitted). In determining whether abstention is proper, the court considers, (1) The nature of the state proceedings in order to determine whether the proceedings implicate important state interests, (2) the timing of the request for federal relief in order to determine whether there are ongoing state proceedings, and (3) the ability of the federal plaintiff to litigate its federal constitutional claims in state proceedings. *Id.* Abstention is not appropriate if "the state proceedings demonstrate bad faith, harassment, or some other extraordinary circumstances." *Id.*

Colorado River abstention requires evaluation of eight factors for determining whether exceptional circumstances exist warranting federal abstention from concurrent federal and state proceedings: "(1)which court first assumed jurisdiction over any property at stake; (2) the inconvenience of the federal forum; (3) the desire to avoid piecemeal litigation; (4) the order in which the forums obtained jurisdiction; (5) whether federal law or state law provides the rule of decision on the merits; (6) whether the state court proceedings can adequately protect the rights of the federal litigants; (7) the desire to avoid forum shopping; and (8) whether the state court proceedings will resolve all issues before the federal court." *Seneca Insurance Company, Inc. v. Strange Land, Inc.,* 862 F.3d 835 (9th Cir. 2017).

Rooker-Feldman abstention states that "a federal district court does not have subject matter jurisdiction to hear a direct appeal from the final judgment of a state court. The United States Supreme Court is the only federal court with jurisdiction to hear such an appeal." *Noel v. Hall,* 341 F.3d 1148, 1154 (9th Cir. 2003). Further a district court "must also refuse to decide any issue raised in the suit that is "inextricably intertwined" with an issue resolved by the state court in its judicial decision." *Id.* at 1158.

6. **Have you ever worked on a legal case or representation in which you opposed a party's religious liberty claim?**

Response: No.

a. **If so, please describe the nature of the representation and the extent of your involvement. Please also include citations or reference to the cases, as appropriate**

   Response: See Response to Question 6.

7. **What role should the original public meaning of the Constitution's text play in the courts' interpretation of its provisions?**

   Response: If confirmed as a federal district judge, I would apply the original public meaning of the constitution in all cases where the Supreme Court has made clear that it is the appropriate method of constitutional interpretation to use. For example, the Supreme Court has applied originalism to the interpretation of the Second Amendment in *Heller, McDonald*, and *Bruen*. "Constitutional rights are enshrined with the scope they are understood to have *when the people adopted them*." *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111, 2136 (2022) (quoting *District of Columbia v. Heller*, 554 U.S. 570, 634-35 (2008)).

8. **Do you consider legislative history when interpreting legal texts?**

   Response: When interpreting a law, I first start with the text and any binding legal precedent addressing the precise question. If the legal text is clear and unambiguous the inquiry ends there. If the text is ambiguous, I would look to canons of statutory construction and persuasive but non-binding precedent from other federal courts. The Supreme Court has sometimes looked to the legislative history, although it has cautioned that "legislative history is not the law." *Azar v. Allina Health Services*, 139 S. Ct. 1804 (2019).

   a. **If so, do you treat all legislative history the same or do you believe some legislative history is more probative of legislative intent than others?**

      Response: The Supreme Court has indicated that "the views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one." *Consumer Product Safety Commission v. GTE Sylvania, Inc.* 447 U.S. 102, 117 (1980) (quoting *United States v. Price* 361 U.S. 304 (1960)). "Committee Reports are more authoritative than comments from the floor." *Garcia v. United States,* 469 U.S. 70, 76 (1984) (internal quotation marks omitted).

   b. **When, if ever, is it appropriate to consult the laws of foreign nations when interpreting the provisions of the U.S. Constitution?**

Response: The U.S. Constitution is a domestic document and should be interpreted by domestic courts. If confirmed, I will apply Supreme Court and Ninth Circuit precedent.

9. **Under the precedents of the Supreme Court and U.S. Court of Appeals for the Circuit to which you have been nominated, what is the legal standard that applies to a claim that an execution protocol violates the Eighth Amendment's prohibition on cruel and unusual punishment?**

   Response: A challenge to the method of execution must "establish that the method presents a risk that is sure or very likely to cause serious illness and needless suffering and give[s] rise to sufficiently *imminent* dangers." *Atwood v. Shinn,* 36 F.4th 901 (9th Cir. 2022) (quoting *Glossip v. Gross,* 576 U.S. 863 (2015)).

10. **Under the Supreme Court's holding in *Glossip v. Gross*, 135 S. Ct. 824 (2015), is a petitioner required to establish the availability of a "known and available alternative method" that has a lower risk of pain in order to succeed on a claim against an execution protocol under the Eighth Amendment?**

    Response: Yes.

11. **Has the Supreme Court or the U.S. Court of Appeals for the Circuit to which you have been nominated ever recognized a constitutional right to DNA analysis for habeas corpus petitioners in order to prove their innocence of their convicted crime?**

    Response: The Supreme Court in *District Attorney's Office for Third Judicial Dist. v. Osborne*, 557 U.S. 52 (2009), held there is no postconviction constitutional right to DNA analysis.

12. **Do you have any doubt about your ability to consider cases in which the government seeks the death penalty, or habeas corpus petitions for relief from a sentence of death, fairly and objectively?**

    Response: No.

13. **Under Supreme Court and U.S. Court of Appeals for the Circuit to which you have been nominated, what is the legal standard used to evaluate a claim that a facially neutral state governmental action is a substantial burden on the free exercise of religion? Please cite any cases you believe would be binding precedent.**

Response: A facially neutral and generally applicable governmental action will not trigger strict scrutiny. However, if the governmental action is not neutral and generally applicable, courts should apply strict scrutiny. *Kennedy v. Bremerton School District,* 142 S. Ct. 2407 (2022). Under a strict scrutiny analysis, the government action must be narrowly tailored to accomplish a compelling government interest.

"A government policy will not qualify as neutral if it is specifically directed at. . . . religious practice. A policy can fail this test if it discriminate[s] on its face, or if a religious exercise is otherwise its object. A government policy will fail the general applicability requirement if it prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way, or if it provides a mechanism for individualized exemptions." *Kennedy v. Bremerton School District,* 142 S. Ct. 2407, 2422 (2022) (internal quotation marks and citations omitted); *See also Masterpiece Cakeshop, LTD v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2018); *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014).

14. **Under Supreme Court and U.S. Court of Appeals for the Circuit to which you have been nominated, what is the legal standard used to evaluate a claim that a state governmental action discriminates against a religious group or religious belief? Please cite any cases you believe would be binding precedent.**

    Response: See Response to Questions 13.

15. **What is the standard in the U.S. Court of Appeals for the Circuit to which you have been nominated for evaluating whether a person's religious belief is held sincerely?**

    Response: "[C]ourts may not inquire into the truth, validity, or reasonableness of a claimant's religious beliefs. . . . if the free exercise right were dependent on one's ability to establish the truth of one's beliefs, then the First Amendment guarantees might be rendered illusory. *Callahan v. Woods,* 658 F.2d 679 (9th Cir. 1981), *citing United States v. Ballard,* 322 U.S. 78 (1944) (internal quotation marks omitted). In *Callahan*, the court concluded the plaintiff's concerns were derived from his understanding of the New Testament Book of Revelation, a text he considered holy. The plaintiff's beliefs were theological and addressed spiritual, not just worldly concerns. *Id.* at 686. A court's "narrow function" in evaluating the sincerity of a religious belief is whether the asserted belief reflects "an honest conviction." *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 725 (2014) (internal citation and quotation omitted).

16. **The Second Amendment provides that, "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."**

    a. **What is your understanding of the Supreme Court's holding in *District of Columbia v. Heller*, 554 U.S. 570 (2008)?**

       Response: The Supreme Court in *Heller* held the Second Amendment confers an individual right to bear a firearm.

    b. **Have you ever issued a judicial opinion, order, or other decision adjudicating a claim under the Second Amendment or any analogous state law? If yes, please provide citations to or copies of those decisions.**

       Response: No.

17. **Dissenting in *Lochner v. New York*, Justice Oliver Wendell Holmes, Jr. wrote that, "The 14th Amendment does not enact Mr. Herbert Spencer's Social Statics." 198 U.S. 45, 75 (1905).**

    a. **What do you believe Justice Holmes meant by that statement, and do you agree with it?**

       Response: Justice Holmes explained what he meant, "But a Constitution is not intended to embody a particular economic theory." I agree that judges should issue decisions impartially and without inserting their personal view.

    b. **Do you believe that *Lochner v. New York*, 198 U.S. 45 (1905), was correctly decided? Why or why not?**

       Response: As a sitting judge and nominee, the Code of Conduct for United States Judges, Canon 3.A.(6) and the Code of Judicial Conduct for Washington Judges, Canon 2, Rule 2.10 prohibit me from offering my personal opinion on whether a matter was correctly decided.

18. **Are there any Supreme Court opinions that have not been formally overruled by the Supreme Court that you believe are no longer good law?**

    a. **If so, what are they?**

    b. **With those exceptions noted, do you commit to faithfully applying all other Supreme Court precedents as decided?**

Response to all subparts: I am not aware of any Supreme Court opinions that have not been formally overruled but are no longer good law. As a sitting judge, I faithfully apply all precedent, including Supreme Court precedent, and would continue to do so if confirmed.

19. Judge Learned Hand famously said 90% of market share "is enough to constitute a monopoly; it is doubtful whether sixty or sixty-four percent would be enough; and certainly thirty-three per cent is not." ***United States v. Aluminum Co. of America*, 148 F.2d 416, 424 (2d Cir. 1945).**

a. Do you agree with Judge Learned Hand?

Response: As a sitting judge and nominee, it is not appropriate for me to offer my personal view on a judicial opinion. If confirmed, I would faithfully apply Supreme Court and Ninth Circuit precedent.

b. If not, please explain why you disagree with Judge Learned Hand.

Response: See Response to Question 19.a.

c. What, in your understanding, is in the minimum percentage of market share for a company to constitute a monopoly? Please provide a numerical answer or appropriate legal citation.

Response: The percentage of market share is one factor in determining whether a company has a monopoly. *Rebel Oil Co., Inc. v. Atlantic Richfield Co.*, 51 F.3d 1421 (9th Cir. 1995). For a claim of actual monopolization, as opposed to attempt–to-monopolize, "a market share of less than 50 percent is presumptively insufficient to establish market power." *Id.* at 1438.

20. Please describe your understanding of the "federal common law."

Response: The Supreme Court has held there is no general federal common law. *Erie Railroad Co. v. Tompkins*, 304 U.S. 64, 78 (1938). Likewise, *United States v. Hudson,* 11 U.S. 32 (1812), held there is no federal criminal common law. In limited circumstances, federal courts may create federal common law, such as when it is "necessary to protect a uniquely federal interest," *Scalia v. Employer Solutions Staffing Group, LLC*, 951 F.3d 1097, 1105 (9th Cir. 2020), and in areas of "strong national or federal concerns such as controversies between states, admiralty matters, or foreign relations." *Id.*

21. If a state constitution contains a provision protecting a civil right and is phrased identically with a provision in the federal constitution, how would you determine the scope of the state constitutional right?

Response: Federal courts must defer to state substantive laws and interpretation of the highest state court. *Erie Railroad Co. v. Tompkins*, 304 U.S. 64, 78 (1938).

a. Do you believe that identical texts should be interpreted identically?

Response: In the context of Question 21, federal courts are bound to apply a state court's interpretation of a state's constitutional provision.

b. Do you believe that the federal provision provides a floor but that the state provision provides greater protections?

Response: States are permitted to grant greater protections than provided under federal law.

22. Do you believe that *Brown v. Board of Education*, 347 U.S. 483 (1954), was correctly decided?

Response: Yes. The Code of Conduct for United States Judges, Canon 3.A.(6) and the Code of Judicial Conduct for Washington Judges, Canon 2, Rule 2.10 prohibit me from commenting on a matter that could come before me. I want all parties who appear before me to be assured that I have not prejudged their case. It is unlikely that the facts of *Brown v. Board of Education* would come before me as the unconstitutionality of segregation is well settled law. Accordingly, I can say that it was correctly decided.

23. Do federal courts have the legal authority to issue nationwide injunctions?

Response: Federal courts have the authority to issue injunctions pursuant to Federal Rule of Civil Procedure 65, which sets out the legal standard for injunctions. Nationwide injunctions have been a source of debate amongst the courts. Justice Thomas and Justice Gorsuch have questioned the district courts' authority to issue nationwide injunctions. The Ninth Circuit has reasoned that "Although there is no bar against . . . nationwide relief in federal district court or circuit court, such broad relief must be necessary to give prevailing parties the relief to which they are entitled," and "no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs." *City and County of San Francisco v. Barr*, 965 F.3d 753 (9th Cir. 2020). If confirmed, I will carefully review the facts presented to me and apply any Supreme Court and Ninth Circuit precedent.

a. If so, what is the source of that authority?

Response: See Response to Question 23.

b. **In what circumstances, if any, is it appropriate for courts to exercise this authority?**

Response: See Response to Question 23.

24. Under what circumstances do you believe it is appropriate for a federal district judge to issue a nationwide injunction against the implementation of a federal law, administrative agency decision, executive order, or similar federal policy?

Response: See Response to Question 23.

25. What is your understanding of the role of federalism in our constitutional system?

Response: "The federal system rests on what might at first seem a counterintuitive insight, that freedom is enhanced by the creation of two governments, not one." *Bond v. U.S.*, 564 U.S. 211, 220-21 (2011) (internal quotation marks omitted). "By denying any one government complete jurisdiction over all concerns in public life, federalism protects the liberty of the individual from arbitrary power." *Id.* at 222.

26. Under what circumstances should a federal court abstain from resolving a pending legal question in deference to adjudication by a state court?

Response: See Response to Question 5.

27. What in your view are the relative advantages and disadvantages of awarding damages versus injunctive relief?

Response: Damages are generally awarded to remedy a past injury, whereas injunctive relief is granted prospectively to prevent a future harm. In awarding damages versus injunctive relief, I am guided by the specific facts of the case.

28. What is your understanding of the Supreme Court's precedents on substantive due process?

Response: In *Washington v. Glucksberg*, 521 U.S. 702 (1997), the Supreme Court reasoned, "First, we have regularly observed that the Due Process Clause specially protects those fundamental right and liberties which are, objectively, deeply rooted in this Nation's history and tradition, and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed. Second, we have

required in substantive due-process cases a careful description of the asserted fundamental liberty interest. Our Nation's history, legal traditions, and practices thus provide the crucial guideposts for responsible decision making that direct and restrain our exposition of the Due Process Clause." (internal quotation marks and citations omitted); *See also Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022).

29. The First Amendment provides "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

a. What is your view of the scope of the First Amendment's right to free exercise of religion?

Response: See Response to Question 13.

b. Is the right to free exercise of religion synonymous and coextensive with freedom of worship? If not, what else does it include?

Response: The free exercise of religion includes more than the freedom of worship. It also "protects against indirect coercion or penalties on the free exercise of religion." C*arson v. Makin*, 142 S. Ct. 1987 (2022) (holding it is a violation of the Free Exercise Clause to offer tuition assistance to nonsectarian schools and not religious schools). *See also Espinoza v. Montana Department of Revenue*, 140 S. Ct. 2246 (2020).

c. What standard or test would you apply when determining whether a governmental action is a substantial burden on the free exercise of religion?

Response: See Response to Question 13.

d. Under what circumstances and using what standard is it appropriate for a federal court to question the sincerity of a religiously held belief?

Response: See Response to Question 15.

e. Describe your understanding of the relationship between the Religious Freedom Restoration Act and other federal laws, such as those governing areas like employment and education?

Response: The Religious Freedom Restoration Act "applies to all Federal law, and the implementation of that law, whether statutory or otherwise, and whether adopted before or after November 16, 1993." 42 U.S.C. § 2000bb-3.

f. **Have you ever issued a judicial opinion, order, or other decision adjudicating a claim under the Religious Freedom Restoration Act, the Religious Land use and Institutionalized Person Act, the Establishment Clause, the Free Exercise Clause, or any analogous state law? If yes, please provide citations to or copies of those decisions.**

Response: No.

30. Justice Scalia said, "The judge who always likes the result he reaches is a bad judge."

a. **What do you understand this statement to mean?**

Response: I am not aware of the context of the statement by Justice Scalia. As a sitting judge, my first and foremost commitment is to the rule of law. I issue decisions without regard to my personal views. Consequently, on occasion, I may issue decisions that I personally do not prefer, but I am compelled to do so by the law.

31. Have you ever taken the position in litigation or a publication that a federal or state statute was unconstitutional?

Response: I do not recall ever taking the position or issuing a decision finding a statute unconstitutional.

a. **If yes, please provide appropriate citations.**

Response: See Response to Question 31.

32. Since you were first contacted about being under consideration for this nomination, have you deleted or attempted to delete any content from your social media? If so, please produce copies of the originals.

Response: To the best of my knowledge, I have not. Last year, I deactivated my state court judicial Facebook account as it was no longer necessary after I was nominated for the federal district court position.

33. Do you believe America is a systemically racist country?

Response: I feel grateful and deeply blessed to live in America. I consider it a great privilege to serve our system of justice as a state trial judge. Systemic racism is an issue for the policymakers to address. As a sitting judge, I am committed to equal justice under law. I treat all participants in my courtroom with respect, dignity and fairness and will continue to do so, if confirmed.

34. **Have you ever taken a position in litigation that conflicted with your personal views?**

Response: I do not recall taking a position in litigation that conflicted with my personal views. However, as a sitting judge, I have issued decisions that conflicted with my personal views.

35. **How did you handle the situation?**

Response: As a sitting judge, I am first and foremost committed to the rule of law. I issue decisions without regard to my personal views. I faithfully apply binding precedent and would continue to do so, if confirmed.

36. **If confirmed, do you commit to applying the law written, regardless of your personal beliefs concerning the policies embodied in legislation?**

Response: Yes, I have done so and will continue to do so, if confirmed.

37. **Which of the Federalist Papers has most shaped your views of the law?**

Response: No specific Federalist Paper has shaped my views of the law.

38. **Do you believe that an unborn child is a human being?**

Response: My personal views have no impact on my legal analysis. The Supreme Court declined to address fetal personhood in *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022).

39. **Other than at your hearing before the Senate Judiciary Committee, have you ever testified under oath? Under what circumstances? If this testimony is available online or as a record, please include the reference below or as an attachment.**

Response: No.

40. **In the course of considering your candidacy for this position, has anyone at the White House or Department of Justice asked for you to provide your views on:**

a. ***Roe v. Wade,* 410 U.S. 113 (1973)?**

b. **The Supreme Court's substantive due process precedents?**

c. **Systemic racism?**

d. **Critical race theory?**

Response to all subparts: No.

41. **Do you currently hold any shares in the following companies:**

a. **Apple?**

b. **Amazon?**

c. **Google?**

d. **Facebook?**

e. **Twitter?**

Response to all subparts: No.

42. **Have you ever authored or edited a brief that was filed in court without your name on the brief?**

Response: No.

43. **If so, please identify those cases with appropriate citation.**

Response: See Response to Question 42.

44. **Have you ever confessed error to a court?**

Response: Yes.

45. **If so, please describe the circumstances.**

Response: I served the opposing party a brief one day past the deadline.

46. **Please describe your understanding of the duty of candor, if any, that nominees have to state their views on their judicial philosophy and be forthcoming when testifying before the Senate Judiciary Committee. *See* U.S. Const. art. II, § 2, cl. 2.**

Response: Nominees swear an oath to answer all questions of the Judiciary Committee truthfully. This requires complete candor on all issues of inquiry to the best of their ability.

Questions from Senator Thom Tillis
for Charnelle Bjelkengren
Nominee to be United States District Judge for the Eastern District of Washington

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

   Response: No. A judge's personal views are not relevant to interpreting and applying the law. As a sitting judge, I do not insert my personal views into my decision-making analysis. When deciding an issue presented to me, I thoroughly research the law and apply the law to the record before me. If confirmed, I will continue to do so without regard to my personal views.

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

   Response: Judicial activism occurs when the judge inserts his or her personal views into the decision-making process. It also occurs by going beyond the issues presented. It is not appropriate.

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

   Response: Impartiality is a basic expectation for a judge. Judges are neutral arbiters and are required to decide cases fairly, impartially and without bias. For the past nine years as a neutral arbiter, I have approached each case without prejudgment and with an open mind and I would continue to do so if confirmed as a federal district court 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: Yes. As a sitting judge, my first and foremost commitment is to the rule of law. I decide cases without regard to my personal views. I take the law and the facts where they lead me and, in this way, reach a decision. I am able to do this because my commitment is to upholding the law and if confirmed, I would continue to do so.

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

   Response: No. The Code of Conduct for United States Judges, Canon 3.A.(1) directs that a judge not be swayed by partisan interests.

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 faithfully apply Supreme Court and Ninth Circuit precedent, including *Heller, McDonald*, and *Bruen,* to the facts of the cases that come before me.

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

   Response: See Response to Question 7.

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: "The doctrine of qualified immunity protects government officials from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Pearson v. Callahan*, 129 S. Ct. 808, 815 (2009) (internal quotation marks and citation omitted). "Whether an official protected by qualified immunity may be held personally liable for an allegedly unlawful official action generally turns on the 'objective legal reasonableness' of the action assessed in light of the legal rules that were 'clearly established' at the time it was taken." *Anderson v. Creighton*, 483 U.S. 635, 639 (1987) (internal citations omitted). If confirmed, I would follow all Supreme Court and Ninth Circuit precedent regarding qualified immunity.

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: As a sitting judge, I do not insert my personal views into my decision-making analysis. Whether qualified immunity is sufficient protection for law enforcement officers is an issue for the policymakers.

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

    Response: See Response to Question 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: "The Court has long held that § 101 which defines the subject matter eligible for patent protection, contains an implicit exception for laws of nature, natural phenomena, and abstract ideas." *Alice Corp. Pty. Ltd. v. CLS Bank Intern*, 573 U.S. 208 (2014) (internal quotation marks omitted). If confirmed, I will apply the Patent Act, 35 U.S.C. § 101, and Supreme Court and Ninth Circuit precedent to the issue of patent eligibility.

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: As a nominee, it is not appropriate for me to comment on a matter that could come before me. I want all parties who appear before me to be assured that I have not prejudged their case. Therefore, it is not appropriate for me to comment on the clarity of the law or how I would decide a case. If confirmed, I will apply Supreme Court and Ninth Circuit precedent to the facts presented to me.

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: In my 12 years as a Washington State Assistant Attorney General and 9 years as a judge, I have not addressed copyright law.

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

       Response: In my 12 years as a Washington State Assistant Attorney General and 9 years as a judge, I have not addressed and have not had any particular experiences with the Digital Millennium Copyright Act.

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

       Response: In my 12 years as a Washington State Assistant Attorney General and 9 years as a judge, I have not had the opportunity to address intermediary liability in this context.

    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: In my 12 years as a Washington State Assistant Attorney General and 9 years as a judge, I have addressed free speech issues but not in the context of intellectual property issues.

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: When interpreting a law, I first start with the text and any binding legal precedent addressing the precise question. If the legal text is clear and unambiguous the inquiry ends there. The Supreme Court has reasoned that the plain meaning of the text reveals Congress' intent. If the text is ambiguous, I would look to canons of statutory construction and persuasive, non-binding precedent from other federal courts. The Supreme Court has sometimes looked to the legislative history, although it has cautioned that "legislative history is not the law." *Azar v. Allina Health Services*, 139 S. Ct. 1804, 1814 (2019) (internal citation omitted).

    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 Congress has addressed the precise issue presented to the court, the court will not defer to the expertise of the agency. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress. However, if the law is ambiguous, and Congress has either expressly or implicitly delegated authority to the agency, the court will defer to the agency's reasonable interpretation of the applicable law. *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984).

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: As a sitting judge, and nominee, the Code of Conduct for United States Judges, Canon 3.A.(6) and the Code of Judicial Conduct for Washington Judges, Canon 2, Rule 2.10 prohibit me from commenting on a matter that could come before me. I want all parties who appear before me to be assured that I have not prejudged their case. Therefore, it is not appropriate for me to comment on what constitutes notice. If confirmed, should this issue come before me, I will apply Supreme Court and Ninth Circuit precedent.

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: This is an important issue for the policymakers to address. If confirmed, I would be bound to apply current Supreme Court and Ninth Circuit precedent related to the Digital Millennium Copyright Act.

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: See Response to Question 16.a.

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: In the Eastern District of Washington, cases are randomly assigned to judges within the district.

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

Response: The Code of Conduct for United States Judges, Canon 3.A.(2) directs judges to "hear and decide matters assigned, unless disqualified." The Code of Conduct for United States Judges Commentary directs judges to "act in a manner that promotes public confidence in the integrity and impartiality of the judiciary." If confirmed, I will faithfully conduct myself in compliance with these principles and not engage in activity to encourage "judge shopping" or "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: Yes, I commit to not engage in such conduct.

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 it is important for a judge to have an understanding of the local rules and the practical consequences of the rules.

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: If confirmed, I commit to adhere to the Code of Conduct for United States Judges, Canon 3.A.(2) directing judges to "hear and decide matters assigned, unless disqualified."