Senator Lindsey Graham, Ranking Member
Questions for the Record
Judge LaShonda A. Hunt
Nominee to be United States District Judge for the Northern District of Illinois

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

   Response: I am not familiar with this statement, but as a sitting bankruptcy judge, my decisions are based solely on the fair and impartial application of the law to the facts and circumstances before me, not any personal views I might have. If confirmed as a district judge, I will faithfully follow Supreme Court and Seventh Circuit precedent when interpreting the Constitution.

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

   Response: I am not familiar with this statement attributed to Judge Reinhardt, but as a sitting bankruptcy judge and if confirmed, a district judge, I will faithfully follow Supreme Court and Seventh Circuit precedent when ruling on all matters.

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

   Response: According to Black's Law Dictionary (11th ed. 2019), the term "living constitution" refers to "[a] constitution whose interpretation and application can vary over time according to changing circumstances and changing social values."

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

   Response: I am not familiar with this statement attributed to Justice Jackson. The Supreme Court recently reaffirmed that "the Founders created a Constitution . . . 'intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs.'" *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2132 (2022), *quoting McCulloch v. Maryland*, 17 U.S. 316, 415 (1819). While "[i]ts meaning is fixed according to the understandings of those who ratified it, the Constitution, can, and must, apply to circumstances beyond those the Founders specifically anticipated." *Bruen*, 142 S. Ct. at 2132. If confirmed as a district judge, I will faithfully follow Supreme Court and Seventh Circuit precedent when interpreting the Constitution.

5. Under Supreme Court and Seventh 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: The Supreme Court acknowledged in *Miller v. Fenton*, 474 U.S. 104, 113 (1985) that "the appropriate methodology for distinguishing questions of fact from questions of law has been, to say the least, elusive." The Court had previously noted that "[Federal Rule of Civil Procedure] 52(a) does not furnish particular guidance with respect to distinguishing law from fact. Nor do we yet know of any other rule or principle that will unerringly distinguish a factual finding from a legal conclusion." *Pullman-Standard v. Swint*, 456 U.S. 273, 288 (1982).

The Seventh Circuit echoed that sentiment in *Mucha v. King*:

> But one cannot answer the question what is a "fact" without first considering the purpose of the question. The purpose here is to draw the line between the trial judge's responsibility and our responsibility. [FRCP] 52(a) in providing that findings of fact made by the district judge in bench trials (and, by interpretation, in all other settings in which district judges are called on to make such findings. . . must be upheld on appeal unless found to be clearly erroneous, assigns to the trial judge the responsibility of determining not only the historical events that are relevant to how the case should be decided but also the legal significance of those events.

792 F.2d 602, 604-605 (7th Cir. 1986).

I am not aware of Supreme Court or Seventh Circuit precedent identifying specific "sources" to consider when distinguishing between questions of fact and questions of law. My research indicates that the inquiry can be context-specific and therefore should be assessed on a case-by-case basis using Supreme Court and Seventh Circuit precedent for guidance. *See e.g., Teva Pharmaceuticals USA, Inc. v. Sandoz, Inc.*, 574 U.S. 318, 326-327)(2015) (explaining in patent cases, that "proper construction of a claim should be treated as a question of law" but "subsidiary factual disputes" are subject to Rule 52(a)'s clear error standard); *Miller,* 474 U.S. at 113 (inquiries into state of mind and dispositive findings in section 2254 habeas matters present questions of fact); *Pullman-Standard*, 456 U.S. at 288-289 (treating discriminatory intent in a Title VII case as a factual matter); *Barber v. Ruth*, 7 F.3d 636, 642 (7th Cir. 1993) (the legal significance of historical facts and inferential facts are questions of fact); *Mucha*, 792 F.2d at 605 ("most courts treat legal characterizations (negligence, possession, ratification, principal place of business, etc.)" that are found by applying a legal standard to a descriptive or historical narrative as findings of fact governed by the clearly erroneous standard).

If confirmed as a district judge, I will faithfully follow Supreme Court and Seventh Circuit precedent when categorizing findings of fact and conclusions of law.

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

   Response: As a sitting bankruptcy judge, I am aware of the ongoing and important discussions about judicial security. Living in a democratic society also means that individuals are afforded certain First Amendment protections when disagreeing with court rulings. If confirmed as a district judge, I will faithfully follow Supreme Court and Seventh Circuit precedent when ruling on issues about free speech.

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

   Response: In enacting the 1984 Sentencing Reform Act, Congress identified all four purposes as goals of the sentencing process, without giving precedence to any single purpose. Instead, Congress outlined specific factors to be considered during the sentencing process in 18 U.S.C. § 3553(a) and directed judges to impose individualized sentences consistent with the federal sentencing guidelines. If confirmed as a district judge, I will faithfully follow all directives from Congress and any applicable Supreme Court or Seventh Circuit precedent when imposing sentences. Any personal views I might have will not influence my decisionmaking process.

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

   Response: I cannot identify a specific Supreme Court decision that exemplifies my judicial philosophy. For the past six years while serving as a United States Bankruptcy Judge, I have approached each case with an open mind, with a focus on fairly and impartially administering all proceedings in a respectful manner, and faithfully and carefully applying applicable binding law to the facts and circumstances of each matter before me. I afford everyone a meaningful opportunity to be heard by the court. And when I rule, whether orally from the bench or in writing, I try to do so diligently, using clear and concise language to ensure that litigants understand the factual and legal basis for my decision. Any personal views I might have do not influence my decisionmaking process. If confirmed as a district judge, this is the judicial philosophy I will continue to follow.

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

   Response: I cannot identify a specific Seventh Circuit judicial opinion that exemplifies my judicial philosophy. For the past six years while serving as a United States Bankruptcy Judge, I have approached each case with an open mind, with a focus on fairly and impartially administering all proceedings in a respectful manner, and faithfully and carefully applying applicable binding law to the facts and circumstances of each matter

before me. I afford everyone a meaningful opportunity to be heard by the court. And when I rule, whether orally from the bench or in writing, I try to do so diligently, using clear and concise language to ensure that litigants understand the factual and legal basis for my decision. Any personal views I might have do not influence my decisionmaking process. If confirmed as a district judge, this is the judicial philosophy I will continue to follow.

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

Response: 18 U.S.C. § 1507 provides that "[w]hoever, with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty, pickets or parades in or near a building housing a court of the United States, or in or near a building or residence occupied or used by such judge, juror, witness, or court officer, or with such intent uses any sound-truck or similar device or resorts to any other demonstration in or near any such building or residence, shall be fined under this title or imprisoned not more than one year, or both."

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

Response: I am not aware of any Supreme Court or Seventh Circuit precedent ruling on the constitutionality of 18 U.S.C. § 1507. However, in *Cox v. Louisiana,* 379 U.S. 559, 562 (1965), the Supreme Court rejected a facial challenge to a similarly worded state statute, explaining that: "A State may adopt safeguards necessary and appropriate to assure that the administration of justice at all stages is free from outside control and influence. A narrowly drawn statute such as the one under review is obviously a safeguard both necessary and appropriate to vindicate the State's interest in assuring justice under law." If confirmed as a district judge, I will follow Supreme Court and Seventh Circuit precedent when analyzing the constitutionality of a statute.

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

Response: In *Cohen v. California*, 403 U.S. 15, 20 (1971), the Supreme Court defined "fighting words" as "those personally abusive epithets which, when addressed to the ordinary citizen, are, as a matter of common knowledge, inherently likely to provoke violent reaction." Relevant facts to consider would be whether anyone "was in fact violently aroused" by the words or if the speaker "intended such a result." *Id.*

13. 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 (2003), the Supreme Court stated that "'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." Intent to carry out the threat is not required. Rather, the goal of prohibiting true threats is to "protect individuals from the fear of violence." *Id.* (citation omitted).

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

a. Was *Brown v. Board of Education* correctly decided?

Response: The Supreme Court's decision in *Brown v. Board of Education* is binding precedent. As a sitting bankruptcy judge and district court nominee, it is generally improper for me to opine on whether Supreme Court decisions were correctly decided. However, as observed by prior judicial nominees, the issues in *Brown* are settled and unlikely to be the subject of further litigation before the courts. Accordingly, I am comfortable stating that *Brown v. Board of Education* was correctly decided. If confirmed as a district judge, I will faithfully follow all Supreme Court and Seventh Circuit precedent.

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

Response: The Supreme Court's decision in *Loving v. Virginia* is binding precedent. As a sitting bankruptcy judge and district court nominee, it is generally improper for me to opine on whether Supreme Court decisions were correctly decided. However, as observed by prior judicial nominees, the issues in *Loving* are settled and unlikely to be the subject of further litigation before the courts. Accordingly, I am comfortable stating that *Loving v. Virginia* was correctly decided. If confirmed as a district judge, I will faithfully follow all Supreme Court and Seventh Circuit precedent.

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

Response: The Supreme Court's decision in *Griswold v. Connecticut* is binding precedent. As a sitting bankruptcy judge and district court nominee, it would be improper for me to opine on whether Supreme Court decisions were correctly decided. If confirmed as a district judge, I will faithfully follow all Supreme Court and Seventh Circuit precedent.

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

Response: The Supreme Court overruled *Roe v. Wade* in *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022). As a sitting bankruptcy judge and district court nominee, it would be improper for me to opine on whether Supreme Court decisions were correctly decided. If confirmed as a district judge, I will faithfully follow all Supreme Court and Seventh Circuit precedent.

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

Response: The Supreme Court overruled *Planned Parenthood v. Casey* in *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022). As a sitting bankruptcy judge and district court nominee, it would be improper for me to opine on whether Supreme Court decisions were correctly decided. If confirmed as a district judge, I will faithfully follow all Supreme Court and Seventh Circuit precedent.

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

Response: The Supreme Court's decision in *Gonzales v. Carhart* is binding precedent. As a sitting bankruptcy judge and district court nominee, it would be improper for me to opine on whether Supreme Court decisions were correctly decided. If confirmed as a district judge, I will faithfully follow all Supreme Court and Seventh Circuit precedent.

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

Response: The Supreme Court's decision in *District of Columbia v. Heller* is binding precedent. As a sitting bankruptcy judge and district court nominee, it would be improper for me to opine on whether Supreme Court decisions were correctly decided. If confirmed as a district judge, I will faithfully follow all Supreme Court and Seventh Circuit precedent.

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

Response: The Supreme Court's decision in *McDonald v. City of Chicago* is binding precedent. As a sitting bankruptcy judge and district court nominee, it would be improper for me to opine on whether Supreme Court decisions were correctly decided. If confirmed as a district judge, I will faithfully follow all Supreme Court and Seventh Circuit precedent.

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

Response: The Supreme Court's decision in *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* is binding precedent. As a sitting bankruptcy judge and district court nominee, it would be improper for me to opine on whether Supreme Court decisions were correctly decided. If confirmed as a district judge, I will faithfully follow all Supreme Court and Seventh Circuit precedent.

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

Response: The Supreme Court's decision in *New York State Rifle & Pistol Ass'n v. Bruen* is binding precedent. As a sitting bankruptcy judge and district court

nominee, it would be improper for me to opine on whether Supreme Court decisions were correctly decided. If confirmed as a district judge, I will faithfully follow all Supreme Court and Seventh Circuit precedent.

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

Response: The Supreme Court's decision in *Dobbs v. Jackson Women's Health Org.* is binding precedent. As a sitting bankruptcy judge and district court nominee, it would be improper for me to opine on whether Supreme Court decisions were correctly decided. If confirmed as a district judge, I will faithfully follow all Supreme Court and Seventh Circuit precedent.

15. 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 Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2156 (2022), the Supreme Court held that individuals possess a "constitutional right to bear arms in public for self-defense." The Court instructed that the proper way to analyze regulations that impact Second Amendment rights is to first assess if the plain text covers the individual's conduct; if so, the conduct is presumptively protected under the Constitution. *Id.* at 2126. To then justify the restriction, "the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation." *Id.* In considering that issue, the Court undertook an extensive review of sources cited by the respondent, including "historical evidence" of English history and custom before the founding and the history of the Colonies and early Republic statutes enacted by colonial legislatures as well as those post-dating the ratification of the Second Amendment (for example, "surety statutes"). *See id. generally* at 2139-2156. If confirmed as a district judge, I will faithfully follow Supreme Court and Seventh Circuit precedent, including the established methodology for analyzing Second Amendment claims.

16. Demand Justice is a progressive organization dedicated to "restor[ing] ideological balance and legitimacy to our nation's courts."

a. Has anyone associated with Demand Justice requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?

Response: No.

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

Response: No.

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

Response: No.

17. **The Alliance for Justice is a "national association of over 120 organizations, representing a broad array of groups committed to progressive values and the creation of an equitable, just, and free society."**

a. **Has anyone associated with Alliance for Justice requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No.

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

Response: No.

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

Response: No.

18. **Arabella Advisors is a progressive organization founded "to provide strategic guidance for effective philanthropy" that has evolved into a "mission-driven, Certified B Corporation" to "increase their philanthropic impact."**

a. **Has anyone associated with Arabella Advisors requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No.

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

Response: N/A.

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

Response: No.

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

Response: No.

19. **The Open Society Foundations is a progressive organization that "work[s] to build vibrant and inclusive democracies whose governments are accountable to their citizens."**

a. **Has anyone associated with Open Society Fund requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No.

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

Response: No.

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

Response: No.

20. **Fix the Court is a "non-partisan, 501(C)(3) organization that advocates for non-ideological 'fixes' that would make the federal courts, and primarily the U.S. Supreme Court, more open and more accountable to the American people."**

a. **Has anyone associated with Fix the Court requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No.

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

Response: No.

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

Response: No.

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

Response: On October 25, 2021, I submitted an application to Senator Dick Durbin's office for an opening on the United States District Court for the Northern District of Illinois. On November 13, 2021, I interviewed with the Northern District of Illinois Judicial Screening Committee. On December 1, 2021, I interviewed with Senator Durbin. On December 7, 2021, I interviewed with Senator Tammy Duckworth. On December 16, 2021, my name was included on a list of seven finalists that Senators Durbin and Duckworth submitted to the White House for consideration. On October 17, 2022, I interviewed with attorneys from the White House Counsel's Office. Since then, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On January 18, 2023, the President announced his intent to nominate me.

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

Response: No.

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

Response: No.

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

Response: No.

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

Response: No.

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

Response: No.

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

Response: On October 14, 2022, I received an email from White House Counsel's Office about scheduling an interview to discuss my potential nomination to the United States District Court for the Northern District of Illinois. I interviewed with attorneys from the White House Counsel's Office on October 17, 2022, and was informed that I would be moving forward in the selection process. Since then, I have been in contact with officials from the Office of Legal Policy at the Department of Justice as well as attorneys from the White House Counsel's Office.

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

Response: On February 22, 2023, I received these questions from the Office of Legal Policy. I drafted my answers and where necessary, reviewed my Senate Judiciary Questionnaire and conducted appropriate legal research. I shared my draft with the Office of Legal Policy and received feedback that I reviewed and considered before finalizing my answers.

Senator Mike Lee
Questions for the Record
LaShonda Hunt, Nominee to the United States District Court for the Northern District of Illinois

1. How would you describe your judicial philosophy?

Response: For the past six years while serving as a United States Bankruptcy Judge, I have approached each case with an open mind, with a focus on fairly and impartially administering all proceedings in a respectful manner, and faithfully and carefully applying applicable binding law to the facts and circumstances of each matter before me. I afford everyone a meaningful opportunity to be heard by the court. And when I rule, whether orally from the bench or in writing, I try to do so diligently, using clear and concise language to ensure that litigants understand the factual and legal basis for my decision. Any personal views I might have do not influence my decisionmaking process. If confirmed as a district judge, this is the judicial philosophy I will continue to follow.

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

Response: As a sitting bankruptcy judge, my consistent practice has been to first determine if there is Supreme Court or Seventh Circuit precedent interpreting the statutory provision at issue. If so, I apply that governing law to the facts and circumstances of the case before me. If none exists, then I review the plain language of the statute and any relevant statutory definitions. Where the text is clear, I apply the language as written to the facts established in the record. If the text is ambiguous, I consider Supreme Court and Seventh Circuit cases interpreting analogous statutes or language for guidance on the proper method of interpretation, and consult relevant canons of construction, persuasive precedent from other Circuits, and legislative history, if appropriate. *See Exxon Mobil Corp. v. Allapatah Servs., Inc.*, 545 U.S 546, 568 (2005) ("As we have repeatedly held, the authoritative statement is the statutory text, not the legislative history or any other extrinsic material. Extrinsic materials have a role in statutory interpretation only to the extent they shed a reliable light on the enacting Legislature's understanding of otherwise ambiguous terms."). Any personal views I might have do not influence my decisionmaking process. If confirmed as a district judge, this is the approach I will continue to follow.

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

Response: As a sitting bankruptcy judge and if confirmed, a district judge, I will faithfully follow Supreme Court and Seventh Circuit precedent interpreting the constitutional provision at issue. If faced with the rare situation where no applicable precedent exists, I would interpret the text of the constitutional provision consistent with the methods of interpretation set forth in binding precedent of the Supreme Court and Seventh Circuit. For example, in analyzing modern firearms regulations,

the Supreme Court has consistently looked to the stated text and original public meaning of the Second Amendment at the time of enactment to assess the constitutionality of those regulations. *See New York State Rifle & Pistol Assn., Inc. v. Bruen*, 142 S. Ct. 2111 (2022); *McDonald v. City of Chicago*, 561 U.S. 742 (2010); *District of Columbia v. Heller*, 554 U.S. 570 (2008).

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

Response: Please see my response to Question 3.

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: Please see my response to Question 2.

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

Response: The Supreme Court recently reaffirmed that "the Founders created a constitution . . . 'intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs.'" *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2132 (2022), *quoting McCulloch v. Maryland*, 17 U.S. 316, 415 (1819). While "[i]ts meaning is fixed according to the understandings of those who ratified it, the Constitution, can, and must, apply to circumstances beyond those the Founders specifically anticipated." *Bruen*, 142 S. Ct. at 2132. *See also Bostock v. Clayton County*, 140 S. Ct. 1731, 1741 (2020) (relying on "the ordinary public meaning of the statute's language at the time of the law's adoption" to determine if firing an individual for being homosexual or transgender violates Title VII). However, the Constitution does not change unless amended in accordance with the procedures set forth in Article V. If confirmed as a district judge, I will faithfully follow Supreme Court and Seventh Circuit precedent when interpreting the Constitution.

6. What are the constitutional requirements for standing?

Response: The Supreme Court stated in *Lujan v. Defenders of Wildlife* that three elements must be shown to establish Article III standing: (1) plaintiff suffered an actual "injury in fact" which is concrete and particularized; (2) there is a causal connection between the injury and the challenged action of the defendant; and (3) it is likely that the injury will be redressed by a favorable decision of the court. 504 U.S. 555, 560-561 (1992) (quotations and citations omitted)

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

Response: The powers of Congress are enumerated in the Constitution. In the landmark case of *McCulloch v. Maryland*, 17 U.S. 316, 324 (1819), the Supreme Court recognized that under the Necessary and Proper Clause of Article I, Section 8, Congress has implied powers as well that include the authorization to pass all laws "necessary and proper to carry into execution the powers conferred on it."

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

Response: The Supreme Court has held that the constitutionality of Congressional action does not depend on explicit reference to the enumerated powers supporting that action. *See Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 570 (2012) (stating that questions about "the constitutionality of action taken by Congress does not depend on recitals of the power which it undertakes to exercise"). If confirmed as a district judge, I will faithfully follow Supreme Court and Seventh Circuit precedent when evaluating the constitutionality of a law enacted by Congress.

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

Response: In *Washington v. Glucksberg*, the Supreme Court stated that the Due Process Clause protects certain fundamental rights and liberties which are "deeply rooted in this Nation's history and tradition" and "implicit in the concept or ordered liberty, such that neither liberty nor justice would exist if they were sacrificed." 521 U.S. 702, 720-721 (1997) (internal quotations omitted). Those unenumerated rights include rights to marry, *Loving v. Virginia*, 388 U.S. 1 (1967) (interracial marriage), *Obergefell v. Hodges,* 567 U.S. 644 (2015) (same-sex marriage); to have children, *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942); to direct the education and upbringing of one's children, *Meyer v. Nebraska*, 262 U.S. 390 (1923); to marital privacy, *Griswold v. Connecticut*, 381 U.S. 479 (1965); to use contraceptives, *Eisenstadt v. Baird*, 405 U.S. 438 (1972); and to bodily integrity, *Rochin v. California*, 342 U.S. 165 (1952).

10. What rights are protected under substantive due process?

Response: Please see my 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 Org.*, 142 S. Ct. 2228, 2242 (2022), the Supreme Court overruled *Roe v. Wade* and *Casey v. Planned Parenthood*, in holding that the Constitution does not confer a right to an abortion. Furthermore, in *Ferguson v. Skrupa*, 372 U.S. 725, 730 (1963), the Supreme Court stated that "[t]he doctrine that prevailed in Lochner. . . and like cases—that due process authorizes

courts to hold laws unconstitutional when they believe the legislature has acted unwisely—has long since been discarded."). If confirmed as a district judge, I will faithfully follow Supreme Court and Seventh Circuit precedent if called upon to distinguish personal or economic rights under the Constitution. Any personal views I might have will not influence my decisionmaking process.

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

Response: Under Article I, Section 8 of the Constitution, Congress has the power to regulate commerce with foreign Nations, and among the several States, and with the Indian Tribes. In *Lopez v. United States*, 514 U.S. 549, 558-559 (1995), the Supreme Court specified three categories of activities that Congress can regulate: (1) the use of the channels of interstate commerce; (2) the instrumentalities of interstate commerce; and (3) those that substantially affect interstate commerce. In *Gonzalez v. Raich*, 545 U.S. 17, 22 (2005), applying a rational basis test, the Supreme Court upheld Congress' authority to regulate activities of local marijuana growers that could affect significantly impact interstate commerce in the aggregate. In *Lopez v. United States*, 514 U.S. 549 (1995), the Supreme Court held that Congress exceeded its authority under the Commerce Clause in enacting a statute criminalizing individual gun possession in a school zone. The Court concluded that "possession of a gun in a local school zone is in no sense an economic activity that might, through repetition elsewhere, substantially affect any sort of interstate commerce." *Id.* at 567.

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

Response: In *Graham v. Richardson*, 403 U.S. 365, 372-373 (1971), the Supreme Court identified "classifications based on alienage, like those based on nationality, or race" as "inherently suspect and subject to close judicial scrutiny." In *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 28 (1973), the Supreme Court described the "traditional indicia of suspectness" as applying to a class "saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process."

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

Response: As the Supreme Court observed in *Morrison v. Olson*, "the system of separated powers and checks and balances established in the Constitution was regarded by the Framers as a self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of the other." 487 U.S. 654, 693 (1988) (internal quotations and citations omitted). Maintaining three separate but equal inter-dependent branches of government is critical to our government structure and a functioning democracy.

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: As a sitting bankruptcy judge and if confirmed, a district judge, I will faithfully follow Supreme Court and Seventh Circuit precedent in a case where the scope of authority assumed by a particular branch of government is at issue. For example, in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), the Supreme Court considered whether an order from the President directing the Secretary of Commerce to seize control of the steel mills to avert a nationwide strike fell within his constitutional power. In analyzing that question, the Court stated that the President's power "must stem from either an act of Congress or from the Constitution itself." *Id.* at 586. Finding no Congressional authority for the order or a basis in Article II of the Constitution to support the exercise of presidential power, the Court held that the order could not stand. *Id.* at 588 (Congress has the "exclusive constitutional authority to make laws necessary and proper to carry out the powers vested by the Constitution" in the federal government or any department or officer).

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

Response: As a sitting bankruptcy judge, I have approached each case with an open mind, with a focus on fairly and impartially administering all proceedings in a respectful manner, and faithfully and carefully applying applicable binding law to the facts and circumstances of each matter before me. I afford everyone a meaningful opportunity to be heard by the court. And when I rule, whether orally from the bench or in writing, I try to do so diligently, using clear and concise language to ensure that litigants understand the factual and legal basis for my decision. Any personal views I might have do not influence my decisionmaking process. If confirmed as a district judge, this is the approach I will continue to follow.

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

Response: Both outcomes are equally troubling and should be avoided.

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

Response: I have not studied this trend or researched these statistics and therefore am not in a position to opine on how the Supreme Court has exercised its power of judicial review. As a sitting bankruptcy judge and if confirmed, a district judge, I will faithfully and carefully apply Supreme Court and Seventh Circuit precedent to the facts and circumstances of any case before me.

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

Response: According to Black's Law Dictionary (11th ed. 2019), the term "judicial review" refers to "[a] court's power to review the actions of other branches or levels of government; esp. the courts' power to invalidate legislative and executive actions as being unconstitutional" and the term "judicial supremacy" refers to "[t]he doctrine that interpretations of the Constitution by the federal judiciary in the exercise of judicial review, esp. U.S. Supreme Court interpretations, are binding on the coordinate branches of the federal government and the states."

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: Article VI of the Constitution requires state and federal officials elected to serve as members of the legislative and executive branch to take an oath to support the Constitution. Article VI likewise requires "judicial officers" of the United States and the several states to take the same oath. *Marbury v. Madison*, 5 U.S. 137 (1803) established the authority of the judicial branch to review the constitutionality of laws and executive acts. The question of how elected officials should balance their obligation to follow the Constitution with the need to respect duly rendered judicial decisions is for policymakers and elected officials to consider. That being said, the Supreme Court has made clear that elected officials are bound by court decisions even if those officials disagree with them. *See, e.g.*, *Cooper v. Aaron*, 385 U.S. 1, 6 (1958) (rejecting the contention that "there is no duty on state officials to obey federal court orders resting on this Court's considered interpretation of the United States Constitution"). As a sitting bankruptcy judge and if confirmed, a district judge, my role is to faithfully and carefully apply Supreme Court and Seventh Circuit precedent to the facts of the case before me in fulfilling my obligation to uphold the rule of law.

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: As a sitting bankruptcy judge and if confirmed, a district judge, I understand that my role as a member of the judicial branch is to faithfully and carefully apply Supreme Court and Seventh Circuit precedent to the facts of the case before me in a fair and impartial manner. Only the legislative branch is charged with making laws. Only the executive branch is charged with administering laws. Under the Constitution, each branch of government has a prescribed function, and I would adhere to that separation of powers.

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

Response: As a sitting bankruptcy judge and if confirmed, a district judge, I am bound by Supreme Court and Seventh Circuit precedent that must be faithfully and carefully applied to the facts of the specific case or controversy that is before me. Any personal views I might have about the precedent do not and would not influence my decisionmaking process should I be confirmed as a district judge.

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: Race, sex, national origin, creed, religion, and socio-economic status of a defendant "are not relevant in the determination of a sentence." *See* U.S.S.G. §5H1.10. The factors to be considered when imposing a sentence are set forth in 18 U.S.C. § 3553(a).

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 familiar with this statement. According to Black's Law Dictionary (11th ed. 2019), the term "equity" refers to "[f]airness; impartiality; evenhanded dealing."

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

Response: According to Black's Law Dictionary (11th ed. 2019), the term "equity" refers to "[f]airness; impartiality; evenhanded dealing" and the term "equality" refers to "[t]he quality, state, or condition of being equal; esp., likeness in power or political status."

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 provides that no State shall deny to any person within its jurisdiction the equal protection of the laws. U.S. Const., amend. XIV, § 1. I am not aware of Supreme Court or Seventh Circuit precedent determining if the definition of "equity" cited above constitutes a protected right under the Equal Protection Clause. If confirmed as a district judge, I will faithfully follow Supreme Court and Seventh Circuit precedent in assessing the scope of protections afforded under the Fourteenth Amendment.

27. How do you define "systemic racism?"

Response: I am not aware of a universally accepted definition for this term. According to Black's Law Dictionary (11th ed. 2019), the term "systemic discrimination" refers to "a]n ingrained culture that perpetuates discriminatory policies and attitudes toward certain classes of people within society or a particular industry, profession, company, or geographic location."

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

Response: I am not aware of a universally accepted definition for this term. According to Black's Law Dictionary (11th ed. 2019), the term "critical race theory" refers to "[a] reform movement within the legal profession, particularly within academia, whose adherents believe that the legal system has disempowered racial minorities."

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

Response: Please see my responses to Questions 27 and 28.

Nomination of LaShonda Annette Hunt
to be United States District Judge for the Northern District of Illinois
Questions for the Record
Submitted February 22, 2023

QUESTIONS FROM SENATOR COTTON

1. **Since becoming a legal adult, have you ever been arrested for or accused of committing a violent crime against any person?**

   Response: No.

2. **Was *D.C. v. Heller*, 554 U.S. 570 (2008) rightly decided?**

   Response: The Supreme Court's decision in *District of Columbia v. Heller* is binding precedent. As a sitting bankruptcy judge and district court nominee, it would be improper for me to opine on whether Supreme Court decisions were correctly decided. If confirmed as a district judge, I will faithfully follow Supreme Court and Seventh Circuit precedent, including *Heller*.

3. **Is the Second Amendment right to keep and bear arms an individual right belonging to individual persons, or a collective right that only belongs to a group such as a militia?**

   Response: The Supreme Court has held that the Second Amendment guarantees the fundamental right of individuals to keep and bear arms. *See New York State Rifle & Pistol Assn., Inc. v. Bruen*, 142 S. Ct. 2111 (2022); *McDonald v. City of Chicago*, 561 U.S. 742 (2010); *District of Columbia v. Heller*, 554 U.S. 570 (2008).

4. **Has your understanding of the Second Amendment changed at all as a result of the Supreme Court's holding in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. ____ (2022)? If so, how?**

   Response: In *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2122 (2022), the Supreme Court held that "consistent with *Heller* and *McDonald*, the Second and Fourteenth Amendments protect an individual's right to carry a handgun for self-defense outside the home." As a sitting bankruptcy judge and if confirmed, a district judge, I will faithfully follow Supreme Court and Seventh Circuit precedent, including *Bruen*, *McDonald*, and *Heller*, regardless of any personal views I might have.

5. **In *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. ____ (2022), the Supreme Court ruled that, to justify a regulation restricting Second Amendment rights, "the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation." How would you, as a judge, go about determining the "historical tradition" of acceptable firearm regulation in the United States?**

Response: In *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2126 the Supreme Court explained that the proper way to analyze regulations affecting Second Amendment rights is to first assess if the plain text covers the individual's conduct. If so, the conduct is presumptively protected under the Constitution, and to justify a restriction, "the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation." *Id.* In considering that issue, the Court undertook an extensive review of sources cited by the respondent, including "historical evidence" of English history and custom before the founding and the history of the Colonies and early Republic statutes enacted by colonial legislatures as well as those post-dating the ratification of the Second Amendment (for example, "surety statutes"). *See id. generally* at 2139-2156. If confirmed as a district judge, I will faithfully follow Supreme Court and Seventh Circuit precedent, including the established methodology for analyzing Second Amendment claims.

6. **Do you believe that judges should respect Congress's legislative choices regarding the sentencing of criminals under federal law, including the choice of whether to apply sentencing reductions retroactively?**

Response: In enacting the 1984 Sentencing Reform Act, Congress identified several policy goals of sentencing. Furthermore, Congress has outlined specific factors to be considered during the sentencing process in 18 U.S.C. § 3553(a) and directed judges to impose individualized sentences consistent with the federal sentencing guidelines. If confirmed as a district judge, I will faithfully follow all directives from Congress and any applicable Supreme Court or Seventh Circuit precedent when imposing sentences. Any personal views I might have will not influence my decisionmaking process.

7. **Do you believe that finality and predictability are important in federal criminal sentencing? Why or why not?**

Response: In enacting the 1984 Sentencing Reform Act, Congress identified several policy goals of sentencing. Furthermore, Congress has outlined specific factors to be considered during the sentencing process in 18 U.S.C. § 3553(a) and directed judges to impose individualized sentences consistent with the federal sentencing guidelines. If confirmed as a district judge, I will faithfully follow all directives from Congress and any applicable Supreme Court or Seventh Circuit precedent when imposing sentences. Any personal views I might have will not influence my decisionmaking process.

8. **Does the president have unilateral authority to categorically ignore immigration laws established by Congress?**

Response: Article II of the Constitution tasks the executive branch with administering and enforcing laws. However, in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 586 (1952), the Supreme Court articulated a limit to the President's power—that it "must stem from either an act of Congress or from the Constitution itself." Only Congress has the "exclusive constitutional authority to make laws necessary and proper to carry out the

powers vested by the Constitution" in the federal government or any department or officer. *Id.* at 588. If confirmed as a district judge, I will faithfully follow Supreme Court and Seventh Circuit precedent in ruling on the scope of presidential powers.

9. What is your understanding of the Citizenship Clause of the Fourteenth Amendment?

Response: Section 1 of the Fourteenth Amendment provides that: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."

10. Do you believe that the Citizenship Clause of the Fourteenth Amendment contains any exceptions? If so, please describe who you believe to be excluded from birthright citizenship.

Response: As a sitting bankruptcy judge and if confirmed, a district judge, I will faithfully follow Supreme Court and Seventh Circuit precedent when interpreting the scope of the Citizenship Clause of the Fourteenth Amendment. Any personal views I might have do not influence my decisionmaking process.

11. Is it unlawful for an agent of state government to actively assist any individual in breaking federal immigration law?

Response: As a sitting bankruptcy judge and district court nominee, the canons of judicial ethics prohibit me from commenting on issues that are or may be the subject of litigation before the courts, as doing so might suggest to future litigants that I have prejudged a matter. If confirmed as a district judge, I will faithfully follow Supreme Court and Seventh Circuit precedent when ruling on all matters.

12. Is it unlawful for an agent of state government to actively shield or hide an individual from lawful federal immigration enforcement?

Response: As a sitting bankruptcy judge and district court nominee, the canons of judicial ethics prohibit me from commenting on issues that are or may be the subject of litigation before the courts, as doing so might suggest to future litigants that I have prejudged a matter. If confirmed as a district judge, I will faithfully follow Supreme Court and Seventh Circuit precedent when ruling on all matters.

13. Please describe what you believe to be the limits of the Environmental Protection Agency's authority according to the terms of the Supreme Court's ruling in *West Virginia v. Environmental Protection Agency*, 597 U.S. ____ (2022).

Response: In *West Virginia v. EPA*, 142 S. Ct. 2587, 2595 (2022), the Supreme Court explained that in "extraordinary cases" where agencies assert a significant "history and breadth of authority" involving issues of "economic and political significance," the major questions doctrine requires a showing of "clear congressional authorization" to undertake

the action. To satisfy that test, the agency must convince the court of "something more than a merely plausible textual basis for the agency action" and instead, "point to clear congressional authorization for the power it claims." (internal quotation and citation omitted). *Id.* at 2609.

14. Please describe what you believe to be the Supreme Court's holding in *Dobbs v. Jackson Women's Health Organization*, 597 U.S. ____ (2022).

Response: In *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228, 2280 (2022), the Supreme Court held that the Constitution does not confer a right to an abortion. The Court overruled both *Roe v. Wade*, 410 U.S. 113 (1973), and *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), and held that the issue of abortion must be decided by "the people and their elected representatives." *Dobbs*, 142 S. Ct. at 2243.

15. Please describe what you believe to be the Supreme Court's holding in *Tandon v. Newsom*, 141 S. Ct. 1294 (2021).

Response: In *Tandon v. Newsom*, 141 S. Ct. 1294, 1297 (2021), the Supreme Court held that the plaintiffs were entitled to an injunction pending appeal as they were "likely to succeed on the merits of their free exercise claim." Plaintiffs sought injunctive relief after the state of California imposed restrictions on at-home private gatherings during the COVID-19 pandemic that, plaintiffs contended, violated their First Amendment right to engage in worship services. The Court observed that its prior decisions have made clear that strict scrutiny is triggered whenever "*any* comparable secular activity [is treated] more favorably than religious exercise." *Id.* at 1296 (emphasis in original). And under that standard of review, "narrow tailoring requires the government to show that measure less restrictive of the First Amendment activity could not address its interest in reducing the spread of COVID." *Id.* at 1296-1297. Because California allowed "hair salons, retail stores, personal care services, movie theaters, private suites at sporting events and concerts, and indoor restaurants to bring together more than three households at a time," but restricted at-home religious activities, the Court concluded that plaintiffs were irreparably harmed by the loss of their free exercise rights "for even minimal periods of time" and the State had not met its burden of showing that "public health would be imperiled by employing less restrictive measures." *Id.* at 1297 (internal quotations and citations omitted).

16. What is your understanding of the fiduciary duties owed by investment firms to their investors?

Response: In *SEC v. Capital Gains Research Bureau*, the Supreme Court stated that as a fiduciary, an investment advisor has "an affirmative duty of utmost good faith, and full and fair disclosure of all material facts, as well as an affirmative obligation to employ reasonable care to avoid misleading his clients." 377 U.S. 180, 194 (1963) (internal quotations and citations omitted). *See also Monetta Financial Serv., Inc. v. SEC*, 390 F.3d 952, 955 (7th Cir. 2004) (upholding in part an SEC order concluding that a

registered investment advisor's failure to disclose material information constituted "fraud or deceit" in violation of the Investment Advisers Act).

17. Do federal drug scheduling actions pursuant to the Controlled Substances Act preempt state or local laws that purport to 'legalize' substances contrary to their federal drug control status?

Response: The Controlled Substances Act, 21 U.S.C. § 903, provides that: "No provision of this subchapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which that provision operates, including criminal penalties, to the exclusion of any State law on the same subject matter which would otherwise be within the authority of the State, unless there is a positive conflict between that provision of this subchapter and that State law so that the two cannot consistently stand together."

18. Under what circumstances, if any, do you believe that it is appropriate for courts to order attorneys to break attorney-client privilege?

Response: In *Upjohn Co. v. United States*, 449 U.S. 383 (1981), the Supreme Court discussed the history and underlying rationale of the attorney-client privilege. *Id.* at 389 (describing it as "the oldest of the privileges for confidential communications known to the common law" that recognizes "sound legal advice or advocacy serves public ends and that such advice or advocacy depends upon the lawyer's being fully informed by the client"). In *Upjohn*, the Court expressly "decline[d] to lay down a broad rule or series of rules to govern all conceivable future questions in this area," and instead, applied governing law to the facts presented in the concrete case before it and concluded that under those circumstances, the privilege applied to communications between the company's employees and counsel. *Id*. at 390-397. Subsequently, in *United States v. Zolin*, 491 U.S. 554 (1989), the Supreme Court considered the crime-fraud exception, which, if applicable, would not protect communications between an attorney and client that were "made for the purpose of getting advice for the commission of a fraud or crime." *Id.* at 562-563 (internal quotation and citation omitted). The Court stated that district courts may undertake an "*in camera* review" to determine if the crime-fraud exception applies once the party opposing the privilege presents "evidence sufficient to support a reasonable belief" that a review "may yield evidence that establishes the exception's applicability." *Id.* at 574-575. *See also United States v. Boender*, 649 F.3d 650, 655-656 (7th Cir. 2011) (applying *Zolin*). If confirmed as a district judge, I will faithfully follow Supreme Court and Seventh Circuit precedent when analyzing the scope of the attorney-client privilege.

19. What is your understanding of the current state of the law regarding the executive privilege of the president of the United States?

Response: In *United States v. Nixon*, 418 U.S. 683, 711 (1974), the Supreme Court stated that "[n]owhere in the Constitution . . . is there any explicit reference to a privilege of confidentiality, yet to the extent this interest relates to the effective discharge of a President's powers, it is constitutionally based." However, the Court concluded that

when the assertion of privilege is "based only on the generalized interest in confidentiality" and would lead to a withholding of "evidence that is demonstrably relevant in a criminal trial [and thereby] cut deeply into the guarantee of due process of law and gravely impair the basic function of the courts," the privilege cannot prevail. *Id*. at 712-713. If confirmed as a district judge, I will faithfully follow Supreme Court and Seventh Circuit precedent when analyzing the applicability of executive privilege.

20. Please describe what you believe to be the Supreme Court's holding in *United States v. Taylor*, 596 U.S. ____ (2022).

Response: In *United States v. Taylor*, 142 S. Ct. 2015 (2022), the issue before the Supreme Court was whether a criminal defendant engaged in a crime of violence for purposes of 28 U.S.C. § 924(c) that would have enhanced his punishment. The Court held that he did not, reasoning that an attempted Hobbs Act robbery did not satisfy the statutory elements. *Taylor,* 142 S. Ct. at 2020.

21. If an individual is ordered deported by our immigration courts, and the individual has exhausted all appeals, should the court's deportation order be carried out, or ignored?

Response: As a sitting bankruptcy judge and if confirmed, a district judge, my role is to faithfully and carefully apply Supreme Court and Seventh Circuit precedent to the facts and circumstances before me in a fair and impartial manner and enter appropriate orders reflecting my decisions. While it is certainly within the province of the executive branch to exercise broad discretion in execution of orders, judges expect parties to promptly comply with court orders unless compliance is properly stayed.

22. What is your view of arbitration as a litigation alternative in civil cases?

Response: In *AT&T Technologies, Inc. v. Comm. Workers of America*, the Supreme Court identified three rules that govern the question of arbitrability: (1) "arbitration is a matter of contract;" (2) "the question of whether the parties agreed to arbitrate is to be decided by the court;" and (3) courts "have no business weighing the merits of a grievance" that is subject to arbitration. 475 U.S. 643, 648-650 (1986) (internal citations omitted). The Supreme Court recently emphasized the limited and neutral role that courts play in the arbitration context: "a court must hold a party to its arbitration contract just as the court would to any other kind. But a court may not devise novel rules to favor arbitration over litigation." *Morgan v. Sundance, Inc.*, 142 S. Ct. 1708, 1714 (2022). *See also Johnson v Mitek Systems, Inc.*, 55 F.4th 1122, 1124 (7th Cir. 2022) ("Courts cannot disfavor arbitration, compared with other agreements, but neither may courts jigger the rules to promote arbitration."). If confirmed as a district judge, I will faithfully follow Supreme Court and Seventh Circuit precedent when ruling on issues about arbitration in civil cases.

23. Please describe what you believe to be the Supreme Court's holding in *Kennedy v. Bremerton*, 597 U.S. ____ (2022).

Response: In *Kennedy v. Bremerton School Dist.*, 142 S. Ct. 2407 (2022), the Supreme Court held that the school district violated the Free Exercise rights of a high school football coach who had been suspended and later fired after he refused to stop kneeling quietly at midfield to pray after games ended. The Court found that the coach met his burden of showing that a sincere religious practice had been burdened by a policy that was not neutral or generally applicable. *Id.* at 2421-2422. Applying strict scrutiny to the school district's actions, the Court concluded that they failed to show that "the restrictions on plaintiff's protected rights serve[d] a compelling interest and [were] narrowly tailored to that end." *Id.* at 2426.

24. Please describe what you believe to be the Supreme Court's holding in *Torres v. Texas Department of Public Safety*, 597 U.S. ____ (2022).

Response: In *Torres v. Texas Dept. of Public Safety*, 142 S. Ct. 2455 (2022), the Supreme Court allowed a soldier to pursue a private damages suit against his prior employer, the State of Texas, for failure to accommodate him upon his return from military service. The Supreme Court approved of Congress exercising its Article I power to abrogate state sovereign immunity in favor of the federal policy of building and keeping keep a national military. *Id.* at 2460.

25. Please describe with particularity the process by which you answered these questions and the written questions of the other members of the Committee.

Response: On February 22, 2023, I received these questions from the Office of Legal Policy. I drafted my answers and where necessary, reviewed my Senate Judiciary Questionnaire and conducted appropriate legal research. I shared my draft with the Office of Legal Policy and received feedback that I reviewed and considered before finalizing my answers.

26. Did any individual outside of the United States federal government write or draft your answers to these questions or the written questions of the other members of the Committee? If so, please list each such individual who wrote or drafted your answers. If government officials assisted with writing or drafting your answers, please identify the department or agency with which those officials are employed.

Response: No.

Senator John Kennedy
Questions for the Record

Ms. LaShonda Hunt

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

   Response: For the past six years while serving as a United States Bankruptcy Judge, I have approached each case with an open mind, with a focus on fairly and impartially administering all proceedings in a respectful manner, and faithfully and carefully applying applicable binding law to the facts and circumstances of each matter before me. I afford everyone a meaningful opportunity to be heard by the court. And when I rule, whether orally from the bench or in writing, I try to do so diligently, using clear and concise language to ensure that litigants understand the factual and legal basis for my decision. Any personal views I might have do not influence my decisionmaking process. If confirmed as a district judge, this is the judicial philosophy I will continue to follow.

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

   Response: The Supreme Court recently reaffirmed that "the Founders created a Constitution . . . 'intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs.'" *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2132 (2022), *quoting McCulloch v. Maryland*, 17 U.S. 316, 415 (1819). While "[i]ts meaning is fixed according to the understandings of those who ratified it, the Constitution, can, and must, apply to circumstances beyond those the Founders specifically anticipated." *Bruen*, 142 S. Ct. at 2132. The Constitution does not change unless amended in accordance with the procedures set forth in Article V. If confirmed as a district judge, I will faithfully follow Supreme Court and Seventh Circuit precedent when interpreting the Constitution.

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

   Response: When interpreting a law, I start by determining if there is Supreme Court or Seventh Circuit precedent that governs. If so, I apply that binding precedent to the facts and circumstances presented. If none exists, then I review the plain language of the statute and any relevant statutory definitions. Where the text is clear, I apply the language as written to the facts and circumstances presented. If the text is ambiguous, I consider Supreme Court and Seventh Circuit cases interpreting analogous statutes or language for guidance on the proper method of interpretation, and consult relevant canons of construction, persuasive precedent from other Circuits, and legislative history, if appropriate. *See Exxon Mobil Corp. v. Allapatah Servs., Inc.*, 545 U.S 546, 568 (2005) ("As we have repeatedly held, the authoritative statement is the statutory text, not the legislative history or any other extrinsic material. Extrinsic materials have a role in

statutory interpretation only to the extent they shed a reliable light on the enacting Legislature's understanding of otherwise ambiguous terms."). Any personal views I might have do not influence my decisionmaking process. If confirmed as a district judge, this is the approach I will continue to follow.

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

Response: I am not aware of Supreme Court or Seventh Circuit precedent resolving this precise question. In *Exxon Mobil Corp. v. Allapatah Servs., Inc.*, 545 U.S 546, 568 (2005), the Supreme Court cautioned that "[n]ot all extrinsic materials are reliable sources of insight into legislative understandings." If confirmed as a district judge, I will faithfully follow Supreme Court and Seventh Circuit precedent when interpreting statutes and identifying probative sources of legislative history.

5. **What First Amendment restrictions can the owner of a shopping center place on private property?**

Response: In *Manhattan Community Access Corp. v. Halleck*, 139 S. Ct. 1921, 1928 (2019), the Supreme Court stated that "the text and original meaning of [the First Amendment], as well as this Court's longstanding precedents, establish that the Free Speech Clause . . . does not prohibit *private* abridgement of speech." (emphasis in original) (collecting cases). Private entities that are not considered state actors are generally free to "exercise editorial discretion over the speech and speakers in the forum." *Id.* at 1929. However, in *PruneYard Shopping Center v. Robins*, 447 US. 74, 82 (1980), the Supreme Court upheld the authority of a state under its own constitution "to entitle its citizens to exercise free expression and petition rights on shopping center property." Shopping center owners are not prevented from restricting expressive activity "by adopting time, place, and manner regulations that will minimize any interference with its commercial functions." *Id.* at 83.

6. **Are non-citizens unlawfully present in the United States entitled to a right of privacy?**

Response: In *Matthews v. Diaz*, 426 U.S. 67, 77 (1976), the Supreme Court observed that there are "literally millions of aliens within the jurisdiction of the United States [and] [t]he Fifth Amendment, as well as the Fourteenth Amendment, protects every one of these persons from deprivation of life, liberty, or property without due process of law . . . [e]ven one whose presence in this country is unlawful." That said, Congress maintains the authority to exercise "broad power over naturalization and immigration" to make "rules that would be unacceptable if applied to citizens." *Id. See also United States v. Verdugo-Urquidez*, 494 U.S. 259, 271 (1990) (collecting cases analyzing scenarios where aliens established a right to particular constitutional protections).

7. **Are non-citizens unlawfully present in the United States entitled to Fourth Amendment rights during encounters with border patrol authorities or other law enforcement entities?**

   Response: In *United States v. Ramsey*, 431 U.S. 606, 615 (1977), the Supreme Court reiterated that "searches made at the border, pursuant to the long-standing right of the sovereign to protect itself by stopping and examining persons and property crossing into this country, are reasonable simply by virtue of the fact that they occur at the border." *See also United States v. Montoya de Hernandez*, 473 U.S. 531, 538 (1985) (explaining that "the Fourth Amendment's balance of reasonableness is qualitatively different at the international border than in the interior"); *Carroll v. United States*, 267 U.S. 132, 153-154 (1925) (recognizing the distinctions between searches within this country—that require probable cause—and border searches).

8. **At what point is a human life entitled to equal protection of the law under the Constitution?**

   Response: I am not aware of Supreme Court or Seventh Circuit precedent resolving this precise question. In *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2261 (2022), the Supreme Court expressed that its opinion "is not based on any view about if and when prenatal life is entitled to any of the rights enjoyed after birth." If confirmed as a district judge, I will faithfully follow Supreme Court and Seventh Circuit precedent when analyzing the scope of equal protection rights.

9. **A federal district court judge in Washington, DC recently suggested that the Thirteenth Amendment may provide a basis for the right to abortion in light of the Supreme Court's decision in *Dobbs v. Jackson Women's Health*.**

   a. **Do you agree?**

      Response: As a sitting bankruptcy judge and district court nominee, the canons of judicial ethics prohibit me from commenting on issues that are or may be the subject of litigation before the courts, as doing so might suggest to future litigants that I have prejudged a matter. If confirmed as a district judge, I will faithfully follow Supreme Court and Seventh Circuit precedent, including *Dobbs*.

   b. **Is it ever appropriate for a lower court judge to imply the existence of a constitutional right despite the existence of controlling precedent to the contrary?**

      Response: Please see my response to Question 9a.

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

Response: District judges are obligated to follow precedent set by the Circuit in which they sit and by the U.S. Supreme Court.

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

Response: In *Crawford v. Marion County Election Bd.*, 553 U.S. 181 (2008), the Supreme Court rejected a facial challenge to a state voter identification law. The Court concluded that a neutral regulation of voting procedures supported by the state's interest in protecting the integrity and reliability of the electoral process was constitutional. *Id.* at 204-205. If confirmed as a district judge, I will faithfully follow Supreme Court and Seventh Circuit precedent when analyzing voting rights claims.

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

Response: In *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2156 (2022), the Supreme Court held that individuals possess a "constitutional right to bear arms in public for self-defense." The Court instructed that the proper way to analyze regulations affecting these Second Amendment rights is to first assess if the plain text covers the individual's conduct; if so, the conduct is presumptively protected under the Constitution. *Id.* at 2126. To then justify the restriction, "the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation." *Id.* In considering that issue, the Court undertook an extensive review of sources cited by the respondent, including "historical evidence" of English history and custom before the founding and the history of the Colonies and early Republic statutes enacted by colonial legislatures as well as those post-dating the ratification of the Second Amendment (for example, "surety statutes"). *See id. generally* at 2139-2156. If confirmed as a district judge, I will faithfully follow Supreme Court and Seventh Circuit precedent, including the established methodology for analyzing Second Amendment claims.

13. The Supreme Court relies on a list of factors to determine whether overturning precedent is prudent in the context of stare decisis.

a. How many factors are necessary to provide a special justification for overturning precedent?

Response: In *Janus v. AFSCME*, 138 S. Ct. 2448, 2478-2479 (2018), the Supreme Court identified five salient factors to consider when deciding whether to depart from the preferred course of *stare decisis*: "the quality of reasoning, the workability of the rule it established, its consistency with other related decisions, developments since the decision was handed down, and reliance on the decision." The Court stated that "all these reasons" provided the "special justification" for overruling precedent. *Id.* at 2486. Similarly, in *Dobbs v. Jackson Women's*

Health Org., 142 S. Ct. 2228, 2265 (2022), the Supreme Court relied on five factors that it concluded weighed strongly in favor of overruling *Roe* and *Casey*: "the nature of their error, the quality of their reasoning, the 'workability of the rules they imposed on the country, their disruptive effect on other areas of the law, and the absence of concrete reliance."

b. Is one factor alone ever sufficient?

Response: Please see my response to Question 13a.

14. Please explain the difference between judicial review and judicial supremacy.

Response: According to Black's Law Dictionary (11th ed. 2019), the term "judicial review" refers to "[a] court's power to review the actions of other branches or levels of government; esp. the courts' power to invalidate legislative and executive actions as being unconstitutional" and the term "judicial supremacy" refers to "[t]he doctrine that interpretations of the Constitution by the federal judiciary in the exercise of judicial review, esp. U.S. Supreme Court interpretations, are binding on the coordinate branches of the federal government and the states."

15. Does the Ninth Amendment protect individual rights or does it provide structural protection applicable to the people?

Response: The Ninth Amendment provides that "[t]he enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." In *District of Columbia v. Heller*, while analyzing the text of the Second Amendment, the Supreme Court noted that "[t]he Ninth Amendment uses very similar terminology [as the First Amendment's Assembly-and-Petition Clause and in the Fourth Amendment's Search-and-Seizure Clause] ('The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people'). All three of these instances unambiguously refer to individual rights, not 'collective rights,' or rights that may be exercised only through participation in some corporate body." 554 U.S. 570, 579 (2008). The Court reiterated that "[n]owhere else in the Constitution does a 'right' attributed to 'the people' refer to anything other than an individual right." *Id.* at 580. I am not aware of Supreme Court or Seventh Circuit precedent interpreting the scope of Ninth Amendment rights. If confirmed as a district judge, I will faithfully follow Supreme Court and Seventh Circuit precedent when interpreting constitutional provisions.

16. Under former U.S. Supreme Court Justice Stephen Breyer's view of 'active liberty', is the Ninth Amendment evolving?

Response: I am not familiar with former Justice Breyer's view of "active liberty" and therefore cannot opine on this point.

17. Are the Bill of Rights informative for understanding the meaning of the Ninth Amendment or should it be interpreted independently of the other amendments?

Response: In *Griswold v. Connecticut*, 381 U.S. 479, 484 (1965), the Supreme Court mentioned the Ninth Amendment while discussing specific guarantees in the Bill of Rights that have "penumbras" and create "zones of privacy." I am not aware of any Supreme Court or Seventh Circuit precedent establishing the appropriate methodology to use when interpreting the scope of rights under the Ninth Amendment. If confirmed as a district judge, I will faithfully follow Supreme Court and Seventh Circuit precedent when interpreting constitutional provisions.

18. Is Founding-era history useful for understanding the meaning of the Ninth Amendment?

Response: I am not aware of any Supreme Court or Seventh Circuit precedent establishing the appropriate methodology to use when interpreting the scope of Ninth Amendment rights, including whether Founding-era history is useful for understanding the Ninth Amendment's meaning. If confirmed as a district judge, I will faithfully follow Supreme Court and Seventh Circuit precedent when interpreting constitutional provisions.

19. The First, Second, Fourth, Ninth, and Tenth Amendments reference "the people."

a. Who is included within the meaning of *'the people*'?

Response: In *United States v. Verdugo-Urquidez,* 494 U.S. 259, 265 (1990), the Supreme Court stated that "the people" who are "protected by the Fourth Amendment, and by the First and Second Amendments, and to whom rights and powers are reserved in the Ninth and Tenth Amendments, refers to a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community."

b. Is the term's meaning consistent in each amendment?

Response: I am not aware of Supreme Court or Seventh Circuit precedent ruling on this precise question. If confirmed as a district judge, I will faithfully follow Supreme Court and Seventh Circuit precedent when interpreting constitutional provisions.

20. Does 'the people' capture non-citizens or illegal immigrants within the meaning of any amendment?

Response: The Supreme Court stated that "aliens receive [certain] constitutional protections when they have come within the territory of the United States and developed substantial connections with this country." *United States v. Verdugo-Urquidez,* 494 U.S. 259, 271-272 (1990) (collecting cases).

21. In *Washington v. Glucksberg,* 521 U.S. 702 (1997), the Supreme Court determined that the right to assisted suicide is not a fundamental liberty interest protected by the Fourteenth Amendment since its practice has been offensive to our national traditions and practices. Do evolving social standards of acceptance for practices like assisted suicide suggest that the meaning of the Due Process Clause changes over time?

Response: The Supreme Court recently reaffirmed that "the Founders created a Constitution . . . 'intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs.'" *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2132 (2022), *quoting McCulloch v. Maryland*, 17 U.S. 316, 415 (1819). While "[i]ts meaning is fixed according to the understandings of those who ratified it, the Constitution, can, and must, apply to circumstances beyond those the Founders specifically anticipated." *Bruen*, 142 S. Ct. at 2132. If confirmed as a district judge, I will faithfully follow Supreme Court and Seventh Circuit precedent when interpreting constitutional provisions.

22. Could the Privileges or Immunities Clause within the Fourteenth Amendment a source of unenumerated rights?

Response: In his concurring opinion in *McDonald v. City of Chicago*, Justice Thomas stated that the Privileges or Immunities Clause provides a basis for protecting enumerated rights. 561 U.S. 741, 858 (2010) ("the right to keep and bear arms is guaranteed by the Fourteenth Amendment as a privilege of American citizenship"). I am not aware of Supreme Court or Seventh Circuit precedent interpreting the Privileges or Immunities Clause as a source of unenumerated rights, and it would be improper for me to opine on issues that are or may be the subject of litigation before the courts, as doing so might suggest to future litigants that I have prejudged the matter. If confirmed as a district judge, I will faithfully follow Supreme Court and Seventh Circuit precedent when interpreting constitutional provisions.

23. Is the right to terminate a pregnancy among the 'privileges or immunities' of citizenship?

Response: I am not aware of Supreme Court or Seventh Circuit precedent ruling on this precise question. Because the right to terminate a pregnancy is the subject of much debate and discussion, it would be improper for me to opine on issues that are or may be the subject of litigation before the courts, as doing so might suggest to future litigants that I have prejudged the matter. If confirmed as a district judge, I will faithfully follow Supreme Court and Seventh Circuit precedent when interpreting constitutional provisions.

24. What is the original holding of *Chevron*? How have subsequent cases changed the *Chevron* doctrine?

Response: In *Chevron v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 866 (1984), the Supreme Court stated that "[w]hen a challenge to an agency construction of a statutory provision, fairly conceptualized, really centers on the wisdom of the agency's policy rather than whether it was a reasonable choice within a gap left open by Congress, the challenge must fail." Instead, federal judges "have a duty to respect legitimate policy choices" and show deference to reasonable agency interpretations. *Id.* Although *Chevron* is still binding precedent, the Supreme Court recently explained in *West Virginia v. EPA*, 142 S. Ct. 2587, 2595 (2022), that in "extraordinary cases" where agencies assert a significant "history and breadth of authority" involving issues of "economic and political significance," the major questions doctrine requires a showing of "clear congressional authorization" to undertake the action. *See also Nat'l Federation of Independent Business v. OSHA*, 142 S. Ct. 661 (2022) (OSHA's COVID-19 vaccine mandate in the workplace exceeded its statutory authority); *Alabama Assn. of Realtors v. Dept. of Health and Human Serv.*, 141 S. Ct. 2485 (2021) (eviction moratorium imposed by the Centers for Disease Control in response to the COVID-19 pandemic held unlawful).

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

Response: In *West Virginia v. EPA*, 142 S. Ct. 2587, 2609 (2022), the Supreme Court stated that the agency must convince the court of "something more than a merely plausible textual basis for the agency action" and instead, "point to clear congressional authorization for the power it claims." (internal quotation and citation omitted).

26. How does the Constitution limit the powers of Congress? Please provide examples.

Response: The powers of Congress are enumerated in Article I of the Constitution. However, section 9 of Article I sets forth explicit limits on Congress' power, including, for example, a prohibition on the passage of bills of attainder or ex post facto laws. In the landmark case of *McCulloch v. Maryland*, 17 U.S. 316, 324 (1819), the Supreme Court recognized that under the Necessary and Proper Clause of Article I, Section 8, Congress has implied powers as well that include the authorization to pass all laws "necessary and proper to carry into execution the powers conferred on it."

27. Please describe the modern understanding and limits of the Commerce Clause.

Response: Under Article I, Section 8 of the Constitution, Congress has the power to regulate commerce with foreign Nations, and among the several States, and with the Indian Tribes. In *Lopez v. United States*, 514 U.S. 549, 558-559 (1995), the Supreme Court specified three categories of activities that Congress can regulate: (1) the use of the channels of interstate commerce; (2) the instrumentalities of interstate commerce; and (3) those that substantially affect interstate commerce.

28. Please provide an example of activity Congress cannot regulate under the Commerce Clause.

Response: In *Lopez v. United States*, 514 U.S. 549 (1995), the Supreme Court held that Congress exceeded its authority under the Commerce Clause in enacting a statute criminalizing individual gun possession in a school zone. The Court concluded that "possession of a gun in a local school zone is in no sense an economic activity that might, through repetition elsewhere, substantially affect any sort of interstate commerce." *Id.* at 567.

29. Should Due Process in the Fourteenth Amendment and Fifth Amendment be interpreted differently? Please explain.

Response: Both the Fourteenth Amendment, as applied to the States, and the Fifth Amendment, as applied to the federal government, prohibit the deprivation of life, liberty, or property, without due process of law. In *McDonald v. City of Chicago,* the Supreme Court pointed out that it has "decisively held that incorporated Bill of Rights protections 'are all to be enforced against the States under the Fourteenth Amendment according to the same standards that protect those personal rights against federal encroachment.'" 561 U.S. 742, 766, *quoting Malloy v. Hogan*, 378 U.S. 1, 10 (1964) (collecting cases). If confirmed as a district judge, I will faithfully follow Supreme Court and Seventh Circuit precedent when interpreting constitutional provisions.

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

Response: As a sitting bankruptcy judge and if confirmed, a district judge, I will faithfully follow Supreme Court and Seventh Circuit precedent, including *Gundy*.

31. Please describe how courts determine whether an agency's action violated the Major Questions doctrine.

Response: Please see my responses to Questions 24 and 25.

32. Please describe your understanding and limits of the anti-commandeering doctrine.

Response: The Tenth Amendment provides that: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." In *New York v. United States*, 112 S. Ct. 2408, 2420 (1992), the Supreme Court reaffirmed that "Congress may not simply commandeer the legislative processes of the States by directly compelling them to enact and enforce a federal regulatory program." The Court recognized that "[w]hile Congress has substantial powers to govern the Nation directly, including in areas of intimate concern to the States, the Constitution has never been understood to confer upon Congress the ability to require the States to govern according to Congress' instructions." *Id.* at 2421. *See also Hodel v.*

Virginia Surface Mining & Reclamation Assn., Inc., 452 U.S. 764, 765 (1981) (action upheld where Congress required only consideration of federal standards).

33. Does the meaning of 'cruel and unusual change over time? Why or why not?

Response: The Constitution is an enduring document with a fixed meaning that can apply to modern circumstances. *See McCulloch v. Maryland*, 17 U.S. 316, 415 (1819). The Supreme Court has stated that "[t]he basic concept underlying the Eighth Amendment is nothing less than the dignity of man.... The Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society." *Atkins v. Virginia*, 536 U.S. 304, 311-312 (2002), *citing Trop v. Dulles*, 356 U.S. 86 (1958). If confirmed as a district judge, I will faithfully follow Supreme Court and Seventh Circuit precedent when interpreting constitutional provisions.

34. Is the death penalty constitutional?

Response: In *Gregg v. Georgia*, 428 U.S. 153 (1976), the Supreme Court held that the death penalty is not *per se* unconstitutional.

35. Can Congress require a federal prosecutor to convene a grand jury for someone charged with criminal contempt of Congress if prosecutorial discretion belongs to the executive branch?

Response: As a sitting bankruptcy judge and district court nominee, the canons of judicial ethics prohibit me from commenting on issues that are or may be the subject of litigation before the courts, as doing so might suggest to future litigants that I have prejudged the matter. If confirmed as a district judge, I will faithfully follow Supreme Court and Seventh Circuit precedent when analyzing issues concerning the scope of Congressional power.

36. Please describe which presidential aides, if any, are entitled to "absolute immunity" from congressional subpoenas.

Response: As a sitting bankruptcy judge and district court nominee, the canons of judicial ethics prohibit me from commenting on issues that are or may be the subject of litigation before the courts, as doing so might suggest to future litigants that I have prejudged the matter. If confirmed as a district judge, I will faithfully follow Supreme Court and Seventh Circuit precedent when analyzing the applicability of affirmative defenses.

37. Do private social media companies create any type of forum that protects speech against restrictions in the context of the First Amendment?

Response: As a sitting bankruptcy judge and district court nominee, the canons of judicial ethics prohibit me from commenting on issues that are or may be the subject of litigation before the courts, as doing so might suggest to future litigants that I have prejudged the

matter. If confirmed as a district judge, I will faithfully follow Supreme Court and Seventh Circuit precedent when interpreting constitutional provisions.

38. How does the Supremacy Clause interact with the Adequate and Independent State grounds doctrine?

Response: Article VI, paragraph 2 of the Constitution establishes the concept of federal supremacy, namely that the Constitution and federal laws take priority over and preempt conflicting state law. That being said, the Supreme Court "from the time of its foundation has adhered to the principle that it will not review judgments of state courts that rest on adequate and independent state grounds." *Herb v. Pitcairn*, 324 U.S. 117, 126 (1945). The Court explained that the rationale for abstaining from asserting federal jurisdiction "is found in the partitioning of power between the state and federal judicial systems and in the limitations of our own jurisdiction. Our only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights. And our power is to correct wrong judgments, not to revise opinions. We are not permitted to render an advisory opinion, and if the same judgment would be rendered by the state court after we corrected its view of federal laws, our review could amount to nothing more than an advisory opinion." *Id.* at 125-126.

39. Please explain why the Fifth Amendment's Due Process Clause does not require the federal government to provide notice and a hearing to an individual before their name is added to the no-fly list.

Response: I am not aware of any Supreme Court or Seventh Circuit precedent ruling on this precise question. If confirmed as a district judge, I will faithfully follow Supreme Court and Seventh Circuit precedent when interpreting constitutional provisions.

40. What's the textual source of the different standards of review for determining whether state laws or regulations violate constitutional rights?

Response: As a sitting bankruptcy judge and if confirmed, a district judge, I am bound to faithfully follow Supreme Court and Seventh Circuit precedent identifying the proper standard of review for claims of violations of statutory or constitutional rights.

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

Response: Federal Rule of Civil Procedure 65 gives district courts the power to grant injunctive relief if certain requirements are met. *See Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 156-157 (2010). I am aware that nationwide injunctions have been issued by several courts and there is substantial debate about the source of authority for this remedy. The Seventh Circuit has stated that "both historical and current practice lends support to a determination that the courts possess the authority to impose injunctions that extend beyond the parties before the court" but also acknowledged that the "propriety of such an injunction, in a given case, is another matter." *City of Chicago*

v. Barr, 961 F.3d 882, 916 (7th Cir. 2020). To the best of my knowledge, neither the Supreme Court nor the Seventh Circuit has ruled on this precise question. If confirmed as a district judge, I will faithfully and carefully apply Supreme Court and Seventh Circuit precedent to the facts and circumstances before me.