Senator Lindsey Graham, Ranking Member
Questions for the Record
Jeremy Christen Daniel
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 or the context in which it was made. To the extent it suggests that a judge should exercise his or her own value judgment when interpreting the Constitution, I disagree with this statement. If confirmed, I would 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 or the context in which it was made. If confirmed, I understand that I must (and would) follow Supreme Court and Seventh Circuit precedent when writing opinions.

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

   Response: Black's Law Dictionary (11th ed. 2019) defines "living constitution" as "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 or the context in which it was made. I understand that the Constitution has a fixed meaning that applies to circumstances beyond those specifically anticipated at the time of adoption. *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2132 (2022). I further understand that the Constitution can be modified by amendment, as laid out in Article V of the Constitution.

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

   Response: Black's Law Dictionary (11th ed. 2019) defines an "attack" as "The act of assailing either with physical violence or with sharp words." It further defines an "ad hominem attack" as "A personal dig or affront; specif., the criticism of an adversary's character as opposed to the substance of the adversary's arguments." If confirmed and

such an issue came before me, I would research and apply Supreme Court and Seventh Circuit precedent to the record before me.

6. **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: I do not understand any of the listed purposes of sentencing to be more important than any other. According to 18 U.S.C. § 3551, a defendant "shall be sentenced in accordance with the provisions of this chapter so as to achieve the purposes set forth in [18 U.S.C. § 3553(a)(2)(A-D)] to the extent that they are applicable in light of all the circumstances of the case." If confirmed, Supreme Court and Seventh Circuit precedent, 18 U.S.C. § 3553(a), and the relevant provisions of the United States Sentencing Guidelines would guide my approach to sentencing defendants based on the circumstances of the case.

7. **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 Supreme Court decision from the last 50 years that provides a typical example of my judicial philosophy. But my judicial philosophy is this: I understand that we are a nation of laws. If confirmed, I would serve the law by faithfully applying binding precedent, approaching each case with an open mind, making any factual determinations based only on the evidence presented, fully and fairly analyzing the legal arguments, and deciding each case according to the rule of law, without fear or favor.

8. **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 Seventh Circuit opinion from the last 50 years that provides a typical example of my judicial philosophy. But my judicial philosophy is this: I understand that we are a nation of laws. If confirmed, I would serve the law by faithfully applying binding precedent, approaching each case with an open mind, making any factual determinations based only on the evidence presented, fully and fairly analyzing the legal arguments, and deciding each case according to the rule of law, without fear or favor.

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

   Response: 18 U.S.C. § 1507 states,

   > Whoever, 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.

Nothing in this section shall interfere with or prevent the exercise by any court of the United States of its power to punish for contempt.

10. **Under Supreme Court precedent, including *Cox v. Louisiana*, is 18 USC § 1507, or a state statute modeled on § 1507, constitutional on its face?**

Response: My research did not identify any Supreme Court or Seventh Circuit precedent finding this statute unconstitutional. In *Cox v. Louisiana*, the Supreme Court, reviewing a statute "modeled after a bill pertaining to the federal judiciary," explained, "Nor does such a statute infringe upon the constitutionally protected rights of free speech and free assembly. The conduct which is the subject of this statute—picketing and parading—is subject to regulation even though intertwined with expression and association." 379 U.S. 559, 563 (1965).

11. **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: As prior judicial nominees have noted, the legal issues presented in *Brown* are unlikely to become the subject of litigation. Accordingly, I am comfortable expressing my view that *Brown* was correctly decided.

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

Response: As prior judicial nominees have noted, the legal issues presented in *Loving* are unlikely to become the subject of litigation. Accordingly, I am comfortable expressing my view that *Loving* was correctly decided.

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

Response: *Griswold* is binding precedent. As a judicial nominee, it is not my place to opine as to whether the Supreme Court correctly decided a case. If confirmed, I will faithfully apply binding precedent.

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

Response: *Roe* has been overruled by *Dobbs*. As a judicial nominee, it is not my place to opine as to whether the Supreme Court correctly decided a case. If confirmed, I will faithfully apply *Dobbs* and all other binding precedent.

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

Response: *Planned Parenthood* has been overruled by *Dobbs*. As a judicial nominee, it is not my place to opine as to whether the Supreme Court correctly decided a case. If confirmed, I will faithfully apply *Dobbs* and all other binding precedent.

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

Response: *Gonzales* is binding precedent. As a judicial nominee, it is not my place to opine as to whether the Supreme Court correctly decided a case. If confirmed, I will faithfully apply binding precedent.

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

Response: *Heller* is binding precedent. As a judicial nominee, it is not my place to opine as to whether the Supreme Court correctly decided a case. If confirmed, I will faithfully apply binding precedent.

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

Response: *McDonald* is binding precedent. As a judicial nominee, it is not my place to opine as to whether the Supreme Court correctly decided a case. If confirmed, I will faithfully apply binding precedent.

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

Response: *Hosanna-Tabor* is binding precedent. As a judicial nominee, it is not my place to opine as to whether the Supreme Court correctly decided a case. If confirmed, I will faithfully apply binding precedent.

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

Response: *Bruen* is binding precedent. As a judicial nominee, it is not my place to opine as to whether the Supreme Court correctly decided a case. If confirmed, I will faithfully apply binding precedent.

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

Response: *Dobbs* is binding precedent. As a judicial nominee, it is not my place to opine as to whether the Supreme Court correctly decided a case. If confirmed, I will faithfully apply binding precedent.

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

Response: In *Bruen*, the Supreme Court held, "In keeping with *Heller*, we hold that when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.'" *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2126 (2022) (citation omitted).

13. **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.

14. **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 Alliance for Justice, including, but not limited to: Rakim Brooks and/or Daniel L. Goldberg?**

    Response: No.

15. **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: Not applicable.

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.

16. **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.

17. **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.

18. **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: In October 2021, Senators Durbin and Duckworth issued a public announcement seeking applicants to fill a vacancy created after a District Judge announced his intention to assume senior status. On October 25, 2021, I submitted my application to the Senators' 12-member Screening Committee. On November 13, 2021, I interviewed with the Screening Committee. On November 30, 2021, I interviewed with Senator Durbin. On December 7, 2021, I interviewed with Senator Duckworth. On December 16, 2021, my name was on a list of seven candidates that Senators Durbin and Duckworth submitted to the White House for consideration. On December 16, 2022, I interviewed with attorneys from the White House Counsel's Office. Since then, I have been in contact with officials at the Office of Legal Policy at the Department of Justice. On March 20, 2023, the President announced his intent to nominate me.

19. **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.

20. **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.

21. **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.

22. **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.

23. **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.

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

    Response: On December 16, 2022, I interviewed with attorneys from the White House Counsel's Office. Since then, I have been in contact with officials at the Office of Legal Policy at the Department of Justice and the White House Counsel's Office regarding my nomination and the confirmation process.

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

    Response: I received these questions on April 25, 2023, from an attorney with the Office of Legal Policy at the Department of Justice. I received these questions, researched relevant case law where appropriate, and drafted my answers. I provided my answers to attorneys at the Office of Legal Policy, who reviewed my answers and provided me with limited feedback, which I considered before finalizing my responses.

Senate Judiciary Committee
Nominations Hearing
April 18, 2023
Questions for the Record
Senator Amy Klobuchar

For Jeremy Christen Daniel, nominee to be United States District Court Judge for the Northern District of Illinois

You spent two years clerking for Judge Virginia M. Kendall in the same court where you are now nominated to serve. Judge Kendall was appointed by President George W. Bush and still serves on the Northern District of Illinois.

- **What were the qualities that made Judge Kendall effective, and how will you emulate those qualities if you are confirmed?**

  Response: I clerked for Judge Kendall from August 2013 to September 2014. Some of the qualities that made her effective were her intelligence, her work ethic, her diligent study of the law, her willingness to listen, her efficient use of chambers staff, and her fair and impartial treatment of all who appeared before her. I learned a great deal from Judge Kendall, and am fortunate to count her as a mentor. I have used many of the insights I learned from her in the years following my clerkship, from how to approach legal questions to how to conduct myself in a courtroom and before a jury. If confirmed, I would faithfully apply binding precedent, approach each case with an open mind, make any factual determinations based only on the evidence presented, fully and fairly analyze legal arguments, and decide each case according to the rule of law, just as I saw Judge Kendall do when I served as her law clerk.

Senator Hirono's Written Questions for Jeremy Christian Daniel
Nominee to the United States District Court for the Northern District of Illinois
April 18, 2023

1. **As part of my responsibility as a member of this Committee to ensure the fitness of nominees, I ask each nominee to answer two questions:**

   a. **Since you became a legal adult, have you ever made unwanted requests for sexual favors, or committed any verbal or physical harassment or assault of a sexual nature?**

      Response: No.

   b. **Have you ever faced discipline or entered into a settlement related to this kind of conduct?**

      Response: No.

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

1. How would you describe your judicial philosophy?

Response: My judicial philosophy is: I understand that we are a nation of laws. If confirmed, I would serve the law by faithfully applying binding precedent, approaching each case with an open mind, making any factual determinations based only on the evidence presented, fully and fairly analyzing the legal arguments, and deciding each case according to the rule of law, without fear or favor, to the best of my ability.

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

Response: If confirmed, I would look to Supreme Court and Seventh Circuit precedent to see whether the law's text has been interpreted in binding precedent. If it hasn't, then I would determine whether the meaning of the statutory text is clear. If it is, then that ends the inquiry. If the text is ambiguous, then I would look to other sources authorized by the Supreme Court and the Seventh Circuit, including Supreme Court and Seventh Circuit cases interpreting similar laws, cases from other jurisdictions as persuasive authority, and accepted canons of statutory construction.

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

Response: If confirmed, I would follow Supreme Court and Seventh Circuit precedent when interpreting the Constitution. If a constitutional provision has not been interpreted by the Supreme Court or Seventh Circuit, I would then seek to ascertain the plain meaning of the provision. If the text is ambiguous, Supreme Court precedent instructs lower courts to look to "historical practices and understandings" when interpreting provisions of the Constitution. *See, e.g., Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2428 (2022); *see also New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2126 (2022).

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

Response: If confirmed, I would follow Supreme Court and Seventh Circuit precedent when interpreting the Constitution, including with respect to the role of the text and original meaning of a constitutional provision. Supreme Court precedent instructs lower courts to look to "historical practices and understandings" when interpreting provisions of the Constitution. *See*, *e.g.*, *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2428 (2022); *see also New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2126 (2022).

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 answer to Question 2.

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

Response: If confirmed, I would faithfully apply Supreme Court and Seventh Circuit precedent on ascertaining the plain meaning of a statute or constitutional provision. In the absence of binding precedent, I would start with the text of the law to ascertain its plain meaning. For undefined terms, I would look to the ordinary, contemporary, common meaning at the time of enactment. *See United States v. Melvin*, 948 F.3d 848, 852 (7th Cir. 2020). If the text is ambiguous, then I would look to other sources authorized by the Supreme Court and the Seventh Circuit, including Supreme Court and Seventh Circuit cases interpreting similar laws, cases from other jurisdictions as persuasive authority, and accepted canons of statutory construction.

6. What are the constitutional requirements for standing?

Response: "[O]ne of the controlling elements in the definition of a case or controversy under Article III is standing. The requisite elements of Article III standing are well established: A plaintiff must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." *Hein v. Freedom From Religion Found., Inc.*, 551 U.S. 587 (2007) (internal 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: "[T]he Necessary and Proper Clause grants Congress broad authority to enact federal legislation. Nearly 200 years ago, this Court stated that the Federal [G]overnment is acknowledged by all to be one of enumerated powers, which means that [e]very law enacted by Congress must be based on one or more of those powers. But, at the same time, a government, entrusted with such powers must also be entrusted with ample means for their execution. Accordingly, the Necessary and Proper Clause makes clear that the Constitution's grants of specific federal legislative authority are accompanied by broad power to enact laws that are convenient, or useful or conducive to the authority's beneficial exercise." *United States v. Comstock*, 560 U.S. 126, 133–34 (2010) (internal quotations and citations omitted).

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

Response: If confirmed, I would follow Supreme Court and Seventh Circuit precedent with respect to evaluating the constitutionality of a law that Congress enacted without reference to a specific Constitutional enumerated power. The Supreme Court has held that, the "question of the constitutionality of action taken by Congress does not depend on recitals of the power which it undertakes to exercise." *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 570 (citation omitted).

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

Response: The Supreme Court has explained,

> First, we have regularly observed that the Due Process Clause specially protects those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition, and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed. Second, we have required in substantive due-process cases a careful description of the asserted fundamental liberty interest. Our Nation's history, legal traditions, and practices thus provide the crucial guideposts for responsible decisionmaking that direct and restrain our exposition of the Due Process Clause. As we stated recently in *Flores*, the Fourteenth Amendment "forbids the government to infringe ... 'fundamental' liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest."

Washington v. Glucksberg, 521 U.S. 702, 720–21 (1997) (internal quotations and citations omitted). Examples of such rights that the Supreme Court has recognized include the right to marry, *Loving v. Virginia*, 388 U.S. 1 (1967), to have children, *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942), to control the education of such children, *Meyer v. Nebraska*, 262 U.S. 390 (1923), and to marital privacy and to use contraception, *Griswold v. Connecticut*, 381 U.S. 479 (1965).

10. What rights are protected under substantive due process?

Response: Please see my answer 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: If confirmed, I would follow Supreme Court and Seventh Circuit precedent with respect to whether substantive due process protects personal rights. In *Dobbs v.*

Jackson Women's Health Organization, 142 S. Ct. 2228 (2022), the Supreme Court held that the Due Process Clause does not protect the right to an abortion. I understand that the Supreme Court has explained, "[t]he doctrine that prevailed in *Lochner*, *Coppage*, *Adkins*, *Burns*, 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. We have returned to the original constitutional proposition that courts do not substitute their social and economic beliefs for the judgment of legislative bodies, who are elected to pass laws." *Ferguson v. Skrupa*, 372 U.S. 726, 730 (1963).

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

Response: The Supreme Court has identified three broad categories of activity that Congress may regulate under its commerce power: (1) the use of the channels of interstate commerce; (2) the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities; and (3) those activities having a substantial relation to interstate commerce, i.e., those activities that substantially affect interstate commerce. *United States v. Lopez*, 514 U.S. 549, 558–59 (1995).

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: The Supreme Court has described the role that checks and balances and separation of powers play in the Constitution's structure. "Time and again we have reaffirmed the importance in our constitutional scheme of the separation of governmental powers into the three coordinate branches. As we stated in *Buckley v. Valeo*, 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." *Morrison v. Olson*, 487 U.S. 654, 693 (1988) (internal quotations and citations omitted).

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

Response: Please see my answer to Question 3. If confirmed and such an issue came before me, I would apply Supreme Court and Seventh Circuit precedent to the record before me.

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

Response: If confirmed, I would serve the law by faithfully applying binding precedent, approaching each case with an open mind, making any factual determinations based only on the evidence presented, fully and fairly analyzing the legal arguments, and deciding each case according to the rule of law, without fear or favor, to the best of my ability. Empathy would play no role in my consideration of cases.

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 suboptimal 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 issue. I understand that we are a nation of laws. If confirmed, I would serve the law by faithfully applying binding precedent, approaching each case with an open mind, making any factual determinations based only on the evidence presented, fully and fairly analyzing the legal arguments, and deciding each case according to the rule of law, without fear or favor, to the best of my ability.

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

Response: Black's Law Dictionary (11th ed. 2019) defines "judicial review" as "1. 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. 2. The constitutional doctrine providing for this power. 3. A court's review of a lower court's or an administrative body's factual or legal findings." Black's Law Dictionary defines "judicial supremacy" as "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 V of the Constitution provides, "The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution." The Supreme Court has explained that the Constitution is the supreme law of the land, that the judiciary interprets the Constitution, and that "[n]o state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it." *Cooper v. Aaron*, 358 U.S. 1, 18 (1958).

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

Response: If confirmed, I would serve the law by faithfully applying binding precedent, approaching each case with an open mind, making any factual determinations based only on the evidence presented, fully and fairly analyzing the legal arguments, and deciding each case according to the rule of law. It would not be my role to make law or enforce law.

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: Lower courts are bound to follow Supreme Court and circuit precedent, and should do just that. If confirmed, I would follow Supreme Court and Seventh Circuit precedent regardless of whether the precedent has "questionable constitutional underpinnings" as referenced in this question.

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: None.

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. I am not aware of any Supreme Court or Seventh Circuit precedent defining equity as such. Black's Law Dictionary (11th ed. 2019) defines "equity" as "fairness; impartiality; evenhanded dealing."

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

Response: Black's Law Dictionary (11th ed. 2019) defines "equity" as "fairness; impartiality; evenhanded dealing." Black's Law Dictionary (11th ed. 2019) defines "equality" as "The 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, "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 any Supreme Court or Seventh Circuity precedent concerning the equity definition referenced in this question.

27. How do you define "systemic racism?"

Response: I do not have a personal definition of this term. Merriam-Webster Dictionary defines it as "the oppression of a racial group to the advantage of another as perpetuated by inequity within interconnected systems (such as political, economic, and social systems)."

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

Response: I do not have a personal definition for this term. Black's Law Dictionary (11th ed. 2019) defines "critical race theory" as "A reform movement within the legal

profession, particularly within academia, whose adherents believe that the legal system has disempowered racial minorities."

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

Response: I have not compared or otherwise studied "critical race theory" or "systemic racism."

Senator Josh Hawley
Questions for the Record

Jeremy Daniel
Nominee, U.S. District Court for the Northern District of Illinois

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

   Response: No.

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

      Response: Not applicable.

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

   Response: If confirmed, I would follow Supreme Court and Seventh Circuit precedent when interpreting the Constitution. For example, Supreme Court precedent instructs lower courts to look to "historical practices and understandings" when interpreting certain provisions of the Constitution. *See*, *e.g.*, *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2428 (2022); *see also New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2126 (2022).

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

   Response: As the Supreme Court has instructed, "legislative history is not the law." *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1631 (2018). If confirmed, I would faithfully apply Supreme Court and Seventh Circuit precedent in deciding when to consider legislative history when interpreting a statutory provision. Legislative history plays no role in interpreting a statutory provision where the meaning of the statute's terms are plain. *Bostock v. Clayton Cnty., Georgia*, 140 S. Ct. 1731, 1749 (2020). If the text is ambiguous, then I would look to other sources authorized by the Supreme Court and the Seventh Circuit, including Supreme Court and Seventh Circuit cases interpreting similar laws, cases from other jurisdictions as persuasive authority, and accepted canons of statutory construction. In some instances, legislative history may serve as a historical source concerning the meaning of a term at the time the statute was enacted. *See Bostock*, 140 S. Ct. at 1350.

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

Response: If confirmed, I would faithfully apply Supreme Court and Seventh Circuit precedent in determining what types of legislative history I am authorized to consider when interpreting a statutory provision for which there is no binding Supreme Court or Seventh Circuit precedent and no plain meaning that resolves the statute's interpretation. For example, the Supreme Court has identified committee reports as more probative than "passing comments" from legislators or comments from floor debates. *Garcia v. United States*, 469 U.S. 70, 76 (1984).

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

Response: I am not aware of any Supreme Court or Seventh Circuit precedent that instructs lower courts to consult the laws of foreign nations when interpreting the provisions of the Constitution.

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

Response: The Supreme Court has held that one must show that an execution protocol "creates a demonstrated risk of severe pain" and that "the risk is substantial when compared to known and available alternatives" to establish that the execution protocol violates the Eighth Amendment. *Glossip v. Gross*, 576 U.S. 863, 877–78, (2015).

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

Response: Yes.

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

Response: No.

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

Response: No.

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

Response: Under the Free Exercise clause, strict scrutiny applies to any government burden placed on the free exercise of religion unless the regulation is neutral and generally applicable. *Fulton v. City of Philadelphia, Pennsylvania*, 141 S. Ct. 1868, 1876 (2021). Congress enacted the Religious Freedom Restoration Act of 1993 ("RFRA") and the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"), which also implicate the exercise of religion. *See Holt v. Hobbs*, 574 U.S. 352, 356–57 (2015). RFRA, which applies to the federal government, provides that "[g]overnment shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability," unless the government "demonstrates that application of the burden to the person—(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." *Id.* at 860 (citing 42 U.S.C. §§ 2000bb–1(a)). RLUIPA, which applies to the States, is similar to RFRA in that it prohibits government from imposing "a substantial burden on the religious exercise of a person residing in or confined to an institution . . . even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person—(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." *Id.* The Supreme Court has held that forcing one to choose between his religious beliefs and severe economic consequences imposes a substantial burden. *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 720 (2014). The Seventh Circuit has held that "when the state forces a prisoner to give away his last dime so that his daily meals will not violate his religious practice, it is imposing a substantial burden." *Jones v. Carter*, 915 F.3d 1147, 1150 (7th Cir. 2019).

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

Response: Strict scrutiny applies where government action discriminates based on religious status. *See*, *e.g.*, *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021); *Espinoza v. Montana Dep't of Revenue*, 140 S. Ct. 2246, 2257 (2020). Accordingly, such a law would be permissible only if it is narrowly tailored to serve a compelling government interest.

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

Response: In the context of the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"), the Seventh Circuit has held that, while "RLUIPA bars inquiry into whether a particular belief or practice is central to a prisoner's religion," courts may inquire "into the sincerity of a prisoner's professed religiosity." *Koger v. Bryan*, 523 F.3d 789, 797 (7th Cir. 2008). In the context of the Religious Freedom Restoration Act of 1993 ("RFRA"), the Seventh Circuit has explained that although "[c]hecking for sincerity and religiosity is important to weed out sham claims," courts should focus primarily on the coercive effect of the government act on religious beliefs. *Korte v. Sebelius*, 735 F.3d 654, 683 (7th Cir. 2013). When reviewing a district court's findings concerning the sincerity of an inmate's professed religious beliefs, the Seventh Circuit reasoned, "[b]ut the fact that a person does not adhere steadfastly to every tenet of his faith does not mark him as insincere. . . . We cannot determine from Judge Sharp's opinion whether he thought Reed's backsliding merely evidence of insincerity, which would be proper, or whether he thought it conclusive evidence of insincerity, which would be improper." *Reed v. Faulkner*, 842 F.2d 960, 963 (7th Cir. 1988).

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

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

Response: The Second Amendment conferred an individual right to keep and bear arms. *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008).

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

Response: No.

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

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

Response: In the context of his dissent, I understand this sentence to reflect Justice Holmes' belief that the court should not replace the legislature's judgment

with its own. Justice Holmes went on to explain that "a Constitution is not intended to embody a particular economic theory, whether of paternalism and the organic relation of the citizen to the state or of laissez faire. It is made for people of fundamentally differing views, and the accident of our finding certain opinions natural and familiar, or novel, and even shocking, ought not to conclude our judgment upon the question whether statutes embodying them conflict with the Constitution of the United States." *Lochner v. New York*, 198 U.S. 45, 75 (1905) (dissenting opinion). I agree with the principle that a court should not substitute its own judgment for the legislature's.

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

Response: As a judicial nominee, it is not my place to opine as to whether the Supreme Court correctly decided a case. If confirmed, I will faithfully apply binding precedent. I understand that the Supreme Court has explained, "[t]he doctrine that prevailed in *Lochner*, *Coppage*, *Adkins*, *Burns*, 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. We have returned to the original constitutional proposition that courts do not substitute their social and economic beliefs for the judgment of legislative bodies, who are elected to pass laws." *Ferguson v. Skrupa*, 372 U.S. 726, 730 (1963).

13. In *Trump v. Hawaii*, the Supreme Court overruled *Korematsu v. United States*, 323 U.S. 214 (1944), saying that the decision—which had not been followed in over 50 years—had "been overruled in the court of history." 138 S. Ct. 2392, 2423 (2018). What is your understanding of that phrase?

Response: I understand this phrase to reflect the Supreme Court's rationale for abrogating *Korematsu*.

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

Response: No.

a. If so, what are they?

Response: Not applicable.

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

Response: Yes.

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

a. Do you agree with Judge Learned Hand?

Response: If confirmed, I will follow Supreme Court and Seventh Circuit precedent. In one case, the Supreme Court held that market share of 80-95% of a service market was sufficient to survive summary judgement under § 2 of the Sherman Act. *Eastman Kodak Co. v. Image Tech. Servs., Inc.*, 504 U.S. 451, 481 (1992). However, I am not aware of any Supreme Court precedent specifying a minimum market share for a monopoly under § 2 of the Sherman Act.

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

Response: Please see my answer to question 15.a.

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

Response: If confirmed, I will follow Supreme Court and Seventh Circuit precedent. In one case, the Supreme Court has held that market share of 80-95% of a service market was sufficient to survive summary judgement under § 2 of the Sherman Act. *Eastman Kodak Co. v. Image Tech. Servs., Inc.*, 504 U.S. 451, 481 (1992). However, I am not aware of any Supreme Court precedent specifying a minimum market share for a monopoly under § 2 of the Sherman Act. The Seventh Circuit has held that "a substantial percentage of the sales is usually at least 50%." *Valley Liquors, Inc. v. Renfield Importers, Ltd*., 822 F.2d 656, 666–67 (7th Cir. 1987).

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

Response: With few exceptions, "there is no federal general common law." *Rodriguez v. Fed. Deposit Ins. Corp*., 140 S. Ct. 713, 717 (2020). Those exceptions include admiralty disputes and certain controversies between the States. *Id.*

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

Response: The Supreme Court instructs lower courts to interpret a state's constitution consistent with the decisions of the state's highest court. *See*, *e.g.*, *Wainwright v. Goode*, 464 U.S. 78, 84 (1983) ("the views of the state's highest court with respect to state law are binding on the federal courts").

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

Response: Please see my answer to Question 17.

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

Response: "State courts are absolutely free to interpret state constitutional provisions to accord greater protection to individual rights than do similar provisions of the United States Constitution." *Arizona v. Evans*, 514 U.S. 1, 8, (1995).

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

Response: As prior judicial nominees have noted, the legal issues presented in *Brown* are unlikely to become the subject of litigation. Accordingly, I am comfortable expressing my view that *Brown* was correctly decided.

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

Response: Yes.

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

Response: Federal Rule of Civil Procedure 65 governs injunctions. The Seventh Circuit has explained that the authority to issue nationwide injunctions stems from federal courts' power to grant equitable relief. *See City of Chicago v. Barr*, 961 F.3d 882, 912-14 (7th Cir. 2020).

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

Response: An injunction is a drastic and extraordinary remedy, which should not be granted as a matter of course. *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165 (2010). The Seventh Circuit has cautioned that nationwide "injunctions present real dangers, and will be appropriate only in rare circumstances." *City of Chicago v. Barr*, 961 F.3d 882, 916–17 (7th Cir. 2020) (internal quotations and citation omitted). But, the Seventh Circuit has explained that, "[i]n some circumstances, universal injunctions can be necessary to provide complete relief to plaintiffs, to protect similarly-situated nonparties, and to avoid the chaos and confusion that comes from a patchwork of injunctions." *Id.*

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

Response: Please see my answer to Question 19.b.

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

Response: Federalism "preserves to the people numerous advantages. It assures a decentralized government that will be more sensitive to the diverse needs of a heterogenous society; it increases opportunity for citizen involvement in democratic processes; it allows for more innovation and experimentation in government; and it makes government more responsive by putting the States in competition for a mobile citizenry." *Gregory v. Ashcroft*, 501 U.S. 452, 458 (1991). Federalism further serves as a check on abuses of government power. *Id.*

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

Response: "The Supreme Court has identified various circumstances in which federal courts must abstain from deciding cases otherwise within their jurisdiction." *J.B. v. Woodard*, 997 F.3d 714, 722 (7th Cir. 2021), reh'g denied (May 27, 2021).

The *Younger* abstention doctrine "directs federal courts to abstain from exercising jurisdiction over federal claims that seek to interfere with pending state court proceedings," and "applies in only three limited categories of cases . . . where federal court intervention would intrude into ongoing state criminal proceedings, into state-initiated civil enforcement proceedings akin to criminal prosecutions, or into civil proceedings implicating a state's interest in enforcing orders and judgments of its courts." *Id.*

The *Rooker-Feldman* abstention doctrine "precludes federal courts, save the Supreme Court under 28 U.S.C. § 1257, from adjudicating cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced." *Id.* at 722-23.

The *Burford* abstention doctrine applies "when there are difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result in the case then at bar" or "where the exercise of federal review of the question in a case and in similar cases would be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern." *Hammer v. United States Dep't of Health & Hum. Servs.*, 905 F.3d 517, 531 (7th Cir. 2018).

The *Colorado River* abstention doctrine, which "authorizes a federal court to abstain from exercising jurisdiction and stay a case to await the outcome of parallel state litigation when there is a substantial likelihood that the state case will resolve the

federal claim." *Driftless Area Land Conservancy v. Valcq*, 16 F.4th 508, 515 (7th Cir. 2021), reh'g denied (Nov. 16, 2021).

And the *Pullman* abstention doctrine, which is appropriate "only when (1) there is a substantial uncertainty as to the meaning of the state law and (2) there exists a reasonable probability that the state court's clarification of state law might obviate the need for a federal constitutional ruling." *Wisconsin Right to Life State Pol. Action Comm. v. Barland*, 664 F.3d 139, 150 (7th Cir. 2011).

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

Response: Any determination as to an advantage or disadvantage in awarding damages versus injunctive relief would require a case-specific analysis based on the evidence presented by the parties concerning the harms the prevailing party experienced.

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

Response: The Supreme Court has explained,

> First, we have regularly observed that the Due Process Clause specially protects those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition, and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed. Second, we have required in substantive due-process cases a careful description of the asserted fundamental liberty interest. Our Nation's history, legal traditions, and practices thus provide the crucial guideposts for responsible decisionmaking that direct and restrain our exposition of the Due Process Clause. As we stated recently in *Flores*, the Fourteenth Amendment "forbids the government to infringe ... 'fundamental' liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest."

Washington v. Glucksberg, 521 U.S. 702, 720–21 (1997) (internal quotations and citations omitted). Examples of such rights that the Supreme Court has recognized include the right to marry, *Loving v. Virginia*, 388 U.S. 1 (1967), to have children, *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942), to control the education of such children, *Meyer v. Nebraska*, 262 U.S. 390 (1923), and to marital privacy and to use contraception, *Griswold v. Connecticut*, 381 U.S. 479 (1965).

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

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

Response: Please see my answers to Questions 8, 9, and 10. "[T]he Free Exercise Clause protects religious exercises, whether communicative or not." *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2421 (2022).

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

Response: Black's Law Dictionary (11th ed. 2019) defines "worship" as "Any form of religious devotion, ritual, or service showing reverence, esp. for a divine being or supernatural power." The Supreme Court has explained that, "the Free Exercise Clause protects religious exercises, whether communicative or not." *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2421 (2022). Therefore, the Free Exercise Clause includes but is not limited to the freedom to worship.

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

Response: Please see my answer to Question 8.

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

Response: Please see my answer to Question 10.

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

Response: The Supreme Court has held that, "a federal regulation's restriction on the activities of a for-profit closely held corporation must comply with RFRA." *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 719 (2014).

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

Response: No.

26. Under American law, a criminal defendant cannot be convicted unless found to be guilty "beyond a reasonable doubt." On a scale of 0% to 100%, what is your understanding of the confidence threshold necessary for you to say that you believe something "beyond a reasonable doubt." Please provide a numerical answer.

Response: Seventh Circuit precedent does not allow trial courts or counsel to define reasonable doubt for the jury. *United States v. Bruce*, 109 F.3d 323, 329 (7th Cir. 1997) ("It is well established in this Circuit, however, that neither trial courts nor counsel should attempt to define 'reasonable doubt' for the jury."). I am not aware of any Supreme Court or Seventh Circuit precedent requiring courts to define reasonable doubt. *See*, *e.g.*, *Victor v. Nebraska*, 511 U.S. 1, 5 583 (1994) ("Indeed, so long as the court instructs the jury on the necessity that the defendant's guilt be proved beyond a reasonable doubt, the Constitution does not require that any particular form of words be used in advising the jury of the government's burden of proof.").

27. The Supreme Court has held that a state prisoner may only show that a state decision applied federal law erroneously for the purposes of obtaining a writ of habeas corpus under 28 U.S.C. § 2254(d) if "there is no possibility fairminded jurists could disagree that the state court's decision conflicts with th[e Supreme] Court's precedents." *Harrington v. Richter*, 562 U.S. 86, 102 (2011).

a. Do you agree that if there is a circuit split on the underlying issue of federal law, that by definition "fairminded jurists could disagree that the state court's decision conflicts with the Supreme Court's precedents"?

Response: As a judicial nominee, the Code of Conduct for United States Judges prohibits me from making public comments on matters that may come before me if confirmed. If confirmed and such an issue came before me, I would apply Supreme Court and Seventh Circuit precedent to the record before me.

b. In light of the importance of federalism, do you agree that if a state court has issued an opinion on the underlying question of federal law, that by definition "fairminded jurists could disagree that the state court's decision conflicts if the Supreme Court's precedents"?

Response: As a judicial nominee, the Code of Conduct for United States Judges prohibits me from making public comments on matters that may come before me

if confirmed. If confirmed and such an issue came before me, I would apply Supreme Court and Seventh Circuit precedent to the record before me.

c. If you disagree with either of these statements, please explain why and provide examples.

Response: As a judicial nominee, the Code of Conduct for United States Judges prohibits me from making public comments on matters that may come before me if confirmed.

28. U.S. Courts of Appeals sometimes issue "unpublished" decisions and suggest that these decisions are not precedential. *Cf.* Rule 32.1 for the U.S. Court of Appeals for the Tenth Circuit.

a. Do you believe it is appropriate for courts to issue "unpublished" decisions?

Response: Seventh Circuit Rule 32.1(b) states, "The court may dispose of an appeal by an opinion or an order. Opinions, which may be signed or per curiam, are released in printed form, are published in the Federal Reporter, and constitute the law of the circuit. Orders, which are unsigned, are released in photocopied form, are not published in the Federal Reporter, and are not treated as precedents." As a judicial nominee, it is not my place to agree or disagree with a higher court's rule.

b. If yes, please explain if and how you believe this practice is consistent with the rule of law.

Response: Please see my answer to Question 28.a.

c. If confirmed, would you treat unpublished decisions as precedential?

Response: No; Seventh Circuit Rule 32.1(b) states that unpublished decisions are "not treated as precedents."

d. If not, how is this consistent with the rule of law?

Response: Please see my answer to Question 28.a.

e. If confirmed, would you consider unpublished decisions cited by litigants when hearing cases?

Response: Yes, but consistent with Seventh Circuit Rule 32.1(b), which prevents consideration of unpublished decisions as precedent.

f. Would you take steps to discourage any litigants from citing unpublished opinions? *Cf.* Rule 32.1A for the U.S. Court of Appeals for the Eighth Circuit.

Response: No.

g. Would you prohibit litigants from citing unpublished opinions? *Cf.* Rule 32.1 for the U.S. Court of Appeals for the District of Columbia.

Response: No.

29. In your legal career:

a. How many cases have you tried as first chair?

Response: Six.

b. How many have you tried as second chair?

Response: Seven.

c. How many depositions have you taken?

Response: I have taken more than ten depositions. I do not know the precise number.

d. How many depositions have you defended?

Response: I have defended more than ten depositions. I do not know the precise number.

e. How many cases have you argued before a federal appellate court?

Response: Four.

f. How many cases have you argued before a state appellate court?

Response: None.

g. How many times have you appeared before a federal agency, and in what capacity?

Response: None.

h. How many dispositive motions have you argued before trial courts?

Response: Two.

i. How many evidentiary motions have you argued before trial courts?

Response: I have argued more than ten evidentiary motions before trial courts. I do not know the precise number.

30. If any of your previous jobs required you to track billable hours:

a. What is the maximum number of hours that you billed in a single year?

Response: The maximum number of hours that I billed exceeded 2,200 hours. I do not know the precise number.

b. What portion of these were dedicated to pro bono work?

Response: I do not recall the precise number. During my six years in private practice, I performed between 25 and 100 hours of pro bono work each year.

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

a. What do you understand this statement to mean?

Response: I am not familiar with this statement or the context in which it was made. I understand this statement to mean that judges who faithfully apply binding precedent, approach each case with an open mind, make any factual determinations based only on the evidence presented, fully and fairly analyze the legal arguments, and decide each case according to the rule of law, will reach outcomes that they may not like.

32. Chief Justice Roberts said, "Judges are like umpires. Umpires don't make the rules, they apply them."

a. What do you understand this statement to mean?

Response: I understand this statement to mean that judges must faithfully apply the law as it is, regardless of any views they may have.

b. Do you agree or disagree with this statement?

Response: I understand that we are a nation of laws. If confirmed, I would serve the law by faithfully applying binding precedent, approaching each case with an open mind, making any factual determinations based only on the evidence

presented, fully and fairly analyzing the legal arguments, and deciding each case according to the rule of law.

33. When encouraged to "do justice," Justice Holmes is said to have replied, "That is not my job. It is my job to apply the law."

a. What do you think Justice Holmes meant by this?

Response: I am not familiar with this statement or the context in which it was made. I understand this statement to mean that judges should apply the law without regard to their personal sense of right or wrong.

b. Do you agree or disagree with Justice Holmes? Please explain.

Response: Black's Law Dictionary (11th ed. 2019) defines "justice" as "1. The fair treatment of people. 2. The quality of being fair or reasonable. 3. The legal system by which people and their causes are judged; esp., the system used to punish people who have committed crimes. 4. The fair and proper administration of laws." If confirmed, I would treat parties appearing before me fairly and consistently by faithfully applying binding precedent, approaching each case with an open mind, making any factual determinations based only on the evidence presented, fully and fairly analyzing the legal arguments, and deciding each case according to the rule of law.

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

Response: No.

a. If yes, please provide appropriate citations.

Response: Not applicable.

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

Response: No.

36. What were the last three books you read?

Response: The Stone Sky by N.K. Jemisin; Kindred by Octavia E. Butler; and The Underground Railroad by Colson Whitehead.

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

Response: If confirmed, I would follow Supreme Court and Seventh Circuit precedent. I would treat every litigant with dignity and respect. As a judicial nominee, the Code of Conduct for United States Judges prohibits me from making public comments on matters that may come before me if confirmed.

38. What case or legal representation are you most proud of?

Response: I do not have a case that I am most proud of. As a federal prosecutor, it is an honor to represent the United States in criminal cases. Each case has been important to me.

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

Response: Yes.

a. How did you handle the situation?

Response: I set aside my personal views and fulfilled my duty to advocate for my client.

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

Response: Yes.

40. What three law professors' works do you read most often?

Response: I do not regularly read law professors' works.

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

Response: There is no single Federalist Paper that most shaped my view of the law.

42. What is a judicial opinion, law review article, or other legal opinion that made you change your mind?

Response: I cannot identify a judicial opinion, law review article, or other legal opinion that made me change my mind. I read judicial opinions and other law-related materials to understand the legal framework that applies to the facts of the case I am considering.

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

Response: The Supreme Court explained, "It is time to heed the Constitution and return the issue of abortion to the people's elected representatives." *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2243 (2022). I am not aware of any Supreme Court or Seventh Circuit precedent that addresses this question. As a judicial nominee, the Code of Conduct for United States Judges prohibits me from making public comments on matters that may come before me if confirmed.

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

Response: Yes. When I was in seventh grade, I was robbed at gunpoint. I testified about the robbery in a criminal trial in the Circuit Court of Cook County, Illinois. I do not recall the case name or number, and do not have a transcript of my testimony.

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

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

Response: No.

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

Response: No.

c. Systemic racism?

Response: No.

d. Critical race theory?

Response: No.

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

a. Apple?

Response: No.

b. Amazon?

Response: No.

c. Google?

Response: No.

d. Facebook?

Response: No.

e. Twitter?

Response: No.

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

Response: To the best of my recollection, any brief that I primarily authored would have my name on it. As a supervisor in the U.S. Attorney's Office, I have proofread, edited, and authored portions of briefs filed by colleagues. I cannot recall with specificity the instances in which I assisted with briefs in this capacity.

a. If so, please identify those cases with appropriate citation.

Response: Please see my answer to Question 47.

48. Have you ever confessed error to a court?

Response: Yes.

a. If so, please describe the circumstances.

Response: In *United States v. Wallace*, the trial court calculated the defendant's advisory guidelines range based on the defendant having at least two felony convictions of either a crime of violence or a controlled substance offense. While the appeal was pending, I received documents showing that one of the predicate offenses relied on by the trial court did not qualify as a controlled substance offense because the defendant pled to a lesser charge, which was not reflected in the criminal history report available at the time of the defendant's sentencing. Consequently, the parties agreed that the appellate court should remand the case for resentencing in light of the documents received. The case number is 17-1768. The case was remanded and the defendant resentenced.

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

Response: I understand that judicial nominees must answer all questions truthfully and should be forthcoming in their responses to the best of their ability.

Senator John Kennedy
Questions for the Record

Mr. Jeremy Daniel

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

   Response: My judicial philosophy is: I understand that we are a nation of laws. If confirmed, I would serve the law by faithfully applying binding precedent, approaching each case with an open mind, making any factual determinations based only on the evidence presented, fully and fairly analyzing the legal arguments, and deciding each case according to the rule of law, without fear or favor, to the best of my ability.

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

   Response: The Constitution has a fixed meaning that applies to circumstances beyond those specifically anticipated at the time of adoption. *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2132 (2022). I further understand that the Constitution can be modified by amendment, as laid out in Article V of 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: If confirmed, I would look to Supreme Court and Seventh Circuit precedent to see whether the law's text has been addressed by binding precedent. If it hasn't, then I would determine whether the meaning of the statutory text is clear. If it is, then that ends the inquiry. If the text is ambiguous, then I would look to other sources authorized by the Supreme Court and the Seventh Circuit, including Supreme Court and Seventh Circuit cases interpreting similar laws, cases from other jurisdictions as persuasive authority, and accepted canons of statutory construction.

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 any Supreme Court or Seventh Circuit precedent that instructs lower courts to consider statements made by a president as part of legislative history.

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

   Response: The Supreme Court held, for example, that a shopping center could prevent individuals from distributing handbills at the shopping center. *Lloyd Corp., Ltd. v. Tanner*, 407 U.S. 551, 570 (1972) ("In addressing this issue, it must be remembered that

the First and Fourteenth Amendments safeguard the rights of free speech and assembly by limitations on state action, not on action by the owner of private property used nondiscriminatorily for private purposes only.").

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

   Response: The Supreme Court has determined that, in certain instances, non-citizens unlawfully present in the United States "receive 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 (1990). "At a minimum, *Verdugo–Urquidez* governs the applicability of the Fourth Amendment to noncitizens. For Fourth Amendment rights to attach, the alien must show 'substantial connections' with the United States." *United States v. Meza-Rodriguez*, 798 F.3d 664, 670 (7th Cir. 2015).

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: Please see my answer to Question 6.

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

   Response: The Supreme Court explained, "It is time to heed the Constitution and return the issue of abortion to the people's elected representatives." *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2243 (2022). I am not aware of any Supreme Court or Seventh Circuit precedent that addresses this question. As a judicial nominee, the Code of Conduct for United States Judges prohibits me from making public comments on matters that may come before me if confirmed. If confirmed and such an issue came before me, I would apply Supreme Court and Seventh Circuit precedent to the record before me.

9. **A federal district court judge in Washington, D.C. 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 judicial nominee, the Code of Conduct for United States Judges prohibits me from making public comments on matters that may come before me if confirmed. If confirmed and such an issue came before me, I would apply Supreme Court and Seventh Circuit precedent to the record before me.

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: No; lower courts have a duty and obligation to follow binding precedent.

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: No; lower courts have a duty and obligation to follow binding precedent.

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

Response: The Supreme Court instructs lower courts that, "evenhanded restrictions that protect the integrity and reliability of the electoral process itself are not invidious and satisfy the standard set forth in *Harper*. Rather than applying any litmus test that would neatly separate valid from invalid restrictions, we concluded that a court must identify and evaluate the interests put forward by the State as justifications for the burden imposed by its rule, and then make the hard judgment that our adversary system demands." *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 189–90 (2008) (internal quotations and citations omitted). In *Crawford*, the Supreme Court upheld the constitutionality of an Indiana statute requiring citizens voting in person on election day, or casting a ballot in person at the office of the circuit court clerk prior to election day, to present photo identification issued by the government. *Id.*

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: If confirmed, I would faithfully apply Supreme Court and Seventh Circuit precedent. In *Bruen*, the Supreme Court held, "In keeping with *Heller*, we hold that when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.'" *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2126 (2022) (citation omitted).

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: The Supreme Court has explained that, "Our cases identify factors that should be taken into account in deciding whether to overrule a past decision. Five of these are most important here: the quality of [the prior decision's] 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." *Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, 138 S. Ct. 2448, 2478–79 (2018). I am not aware of any Supreme Court precedent specifying how many factors must be present to overturn precedent.

b. Is one factor alone ever sufficient?

Response: Please see my answer to Question 13.a.

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

Response: Black's Law Dictionary (11th ed. 2019) defines "judicial review" as "1. 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. 2. The constitutional doctrine providing for this power. 3. A court's review of a lower court's or an administrative body's factual or legal findings." Black's Law Dictionary defines "judicial supremacy" as "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. Do you believe the meaning of the Ninth Amendment is fixed or evolving?

Response: I understand that the Constitution has a fixed meaning that applies to circumstances beyond those specifically anticipated at the time of adoption. *See*, *e.g.*, *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2132 (2022).

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

Response: The Ninth Amendment provides, "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." In his concurrence in *McDonald v. City of Chicago*, 561 U.S. 742, 851 n.20 (2010) (citations omitted), Justice Thomas wrote, "[C]ertain Bill of Rights provisions prevent federal interference in state affairs and are not readily construed as protecting rights that belong to individuals. The Ninth and Tenth Amendments are obvious examples, as is the

First Amendment's Establishment Clause, which 'does not purport to protect individual rights.'"

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: The Supreme Court has considered text that appears elsewhere in the Constitution when deciding the meaning of an Amendment. *See*, *e.g.*, *United States v. Verdugo-Urquidez*, 494 U.S. 259, 265–66, (1990) (contrasting the use of the term "the people" in the Fourth Amendment and elsewhere in the Constitution with "person" in the Fifth and Sixth Amendments).

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

Response: If confirmed, I would follow Supreme Court and Seventh Circuit precedent when interpreting the Constitution. Supreme Court precedent instructs lower courts to look to "historical practices and understandings" when interpreting provisions of the Constitution. *See, e.g., Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2428 (2022); *see also New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2126 (2022).

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, 271 (1990), the Supreme Court defined the meaning of "the people" as used in the Fourth Amendment as those "within the territory of the United States and [who have] developed substantial connections with this country." In *District of Columbia v. Heller*, 554 U.S. 570, 580 (2008), the Supreme Court defined the meaning of "the people" as used in the Second Amendment refers to "all members of the political community."

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

Response: Please see my answer to Question 19.a.

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

Response: Please see my answer to Question 19.a.

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: I understand that the Constitution has a fixed meaning that applies to circumstances beyond those specifically anticipated at the time of adoption. *See*, *e.g.*, *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2132 (2022). The Supreme Court explained in *Glucksberg*, "First, the Court has regularly observed that the Clause specially protects those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition. Second, the Court has required a 'careful description' of the asserted fundamental liberty interest." *Washington v. Glucksberg*, 521 U.S. 702, 703 (1997) (citations omitted).

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

Response: In *Dobbs*, the Supreme Court noted, "That [the Fourteenth Amendment does not protect the right to an abortion] is true regardless of whether we look to the Amendment's Due Process Clause or its Privileges or Immunities Clause. Some scholars and Justices have maintained that the Privileges or Immunities Clause is the provision of the Fourteenth Amendment that guarantees substantive rights." *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2248 n.22 (2022) (citations omitted). In his concurring opinion, Justice Thomas wrote, "After overruling these demonstrably erroneous decisions, the question would remain whether other constitutional provisions guarantee the myriad rights that our substantive due process cases have generated. For example, we could consider whether any of the rights announced in this Court's substantive due process cases are 'privileges or immunities of citizens of the United States' protected by the Fourteenth Amendment." *Id.* at 2301-02. As a judicial nominee, the Code of Conduct for United States Judges prohibits me from making public comments on matters that may come before me if confirmed. If confirmed and such an issue came before me, I would apply Supreme Court and Seventh Circuit precedent to the record before me.

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

Response: Please see my answer to Question 22.

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

Response: The Chevron doctrine requires a court to grant deference to an agency's reasonable construction of an ambiguous statute even if the agency's reading differs from what the court believes is the best statutory interpretation. *Chevron, USA, Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 842-43 (1984). However, the Supreme Court subsequently explained in *W. Virginia v. Env't Prot. Agency* that it presumes that "Congress intends to make major policy decisions itself, not leave those decisions to agencies." 142 S. Ct. 2587, 2609 (2022).

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

Response: The Supreme Court has explained that, "Administrative agencies are creatures of statute. They accordingly possess only the authority that Congress has provided." *Nat'l Fed'n of Indep. Bus. v. Dep't of Lab., Occupational Safety & Health Admin.*, 142 S. Ct. 661, 665 (2022). These delegations can be broad. *See*, *e.g.*, *Gundy v. United States*, 139 S. Ct. 2116, 2129 (2019) ("we have over and over upheld even very broad delegations. . . We have approved delegations to various agencies to regulate in the 'public interest.'"). However, the Supreme Court subsequently explained in *W. Virginia v. Env't Prot. Agency* that it presumes that "Congress intends to make major policy decisions itself, not leave those decisions to agencies." 142 S. Ct. 2587, 2609 (2022).

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

Response: The Constitution limits the powers of Congress through the separation of powers and through federalism. Through the separation of powers, the Constitution divides power among three branches of federal government. Article I states, "all legislative Powers herein granted shall be vested in a Congress of the United States." Article II vests the executive power in the President, and Article III vests the judicial power of the United States in "one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."

Through federalism, the Constitution divides powers between the federal and state governments. "The legislative powers granted to Congress are sizable, but they are not unlimited. The Constitution confers on Congress not plenary legislative power but only certain enumerated powers. Therefore, all other legislative power is reserved for the States, as the Tenth Amendment confirms. And conspicuously absent from the list of powers given to Congress is the power to issue direct orders to the governments of the States." *Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S. Ct. 1461, 1476 (2018).

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

Response: The Supreme Court has identified three broad categories of activity that Congress may regulate under its commerce power: (1) the use of the channels of interstate commerce; (2) the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities; and (3) those activities having a substantial relation to interstate commerce, i.e., those activities that substantially affect interstate commerce. *United States v. Lopez*, 514 U.S. 549, 558–59 (1995).

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

Response: Congress cannot regulate the possession of a firearm in a local school zone. *United States v. Lopez*, 514 U.S. 549, 567 (1995).

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

Response: The Supreme Court has applied similar analyses to due process claims arising under the Fifth and Fourteenth Amendments. *See*, *e.g.*, *Rosales-Mireles v. United States*, 138 S. Ct. 1897, 1906 (2018) (noting that "standard typically is employed when determining whether governmental action violates due process rights under the Fifth and Fourteenth Amendments").

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 judicial nominee, the Code of Conduct for United States Judges prohibits me from making public comments on matters that may come before me if confirmed. If confirmed and such an issue came before me, I would apply Supreme Court and Seventh Circuit precedent to the record before me.

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

Response: The Supreme Court set forth the applicable standard in *W. Virginia v. Environmental Protection Agency*, 142 S. Ct. 2587 (2022). Courts should presume that "Congress intends to make major policy decisions itself, not leave those decisions to agencies," and administrative agencies must be able to point to clear congressional authorization when they claim the power to make decisions of vast economic and political significance. *Id.* at 2605-10.

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

Response: "[W]hile Congress has substantial power under the Constitution to encourage the States to [take an action], the Constitution does not confer upon Congress the ability simply to compel the States to do so." *New York v. United States*, 505 U.S. 144, 149 (1992); *see also Printz v. United States*, 521 U.S. 898, 935 (1997) ("We held in *New York* that Congress cannot compel the States to enact or enforce a federal regulatory program. Today we hold that Congress cannot circumvent that prohibition by conscripting the State's officers directly."). "The anticommandeering doctrine simply represents the recognition of this limit on congressional authority." *Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S. Ct. 1461, 1476 (2018). "The anticommandeering doctrine may sound arcane, but it is simply the expression of a fundamental structural decision incorporated into the Constitution, i.e., the decision to withhold from Congress the power to issue orders directly to the States." *Id.*

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

Response: I understand that the Constitution has a fixed meaning that applies to circumstances beyond those specifically anticipated at the time of adoption. *See, e.g., New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2132 (2022). With respect to the Eighth Amendment, the Supreme Court has explained, "The standard itself remains the same, but its applicability must change as the basic mores of society change." *Kennedy v. Louisiana*, 554 U.S. 407, 419, as modified (Oct. 1, 2008), opinion modified on denial of reh'g, 554 U.S. 945 (2008).

34. Do you believe the death penalty is constitutional?

Response: The Supreme Court has held that the death penalty is constitutional in certain circumstances. *Kennedy v. Louisiana*, 554 U.S. 407, 446, as modified (Oct. 1, 2008), opinion modified on denial of reh'g, 554 U.S. 945 (2008).

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 judicial nominee, the Code of Conduct for United States Judges prohibits me from making public comments on matters that may come before me if confirmed. If confirmed and such an issue came before me, I would apply Supreme Court and Seventh Circuit precedent to the record before me.

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

Response: As a judicial nominee, the Code of Conduct for United States Judges prohibits me from making public comments on matters that may come before me if confirmed. If

confirmed and such an issue came before me, I would apply Supreme Court and Seventh Circuit precedent to the record before me.

37. What restrictions on First Amendment activities can owners of a private shopping center put on their property?

Response: Please see my answer to Question 5. If confirmed and such an issue came before me, I would apply Supreme Court and Seventh Circuit precedent to the record before me.

38. 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 judicial nominee, the Code of Conduct for United States Judges prohibits me from making public comments on matters that may come before me if confirmed. If confirmed and such an issue came before me, I would apply Supreme Court and Seventh Circuit precedent to the record before me.

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

Response: The Supreme Court has explained, "This 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. The reason is so obvious that it has rarely upon thought to warrant statement. It 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 views of federal laws, our review could amount to nothing more than an advisory opinion." *Herb v. Pitcairn*, 324 U.S. 117, 125–26 (1945) (citations omitted). The Supreme Court has further explained that, under the Supremacy Clause, a judgment of a state court remains "subject to disturbance here only to the extent that it fails to honor federal rights and duties." *Ridgway v. Ridgway*, 454 U.S. 46, 54 (1981).

40. 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 addressing this issue. As a judicial nominee, the Code of Conduct for United States Judges prohibits me from making public comments on matters that may come before me if confirmed. If confirmed and such an issue came before me, I would apply Supreme Court and Seventh Circuit precedent to the record before me.

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

Response: Supreme Court decisions are the textual source for lower courts' application of strict scrutiny, intermediate scrutiny, and the rational basis test. *See*, *e.g.*, *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2422 (2022) (applying strict scrutiny); *Craig v. Boren*, 429 U.S. 190, 197 (1976) (applying intermediate scrutiny); *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2283 (2022) (applying the rational basis test).

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

Response: The Supreme Court has instructed lower courts that, "[a]n injunction is a drastic and extraordinary remedy, which should not be granted as a matter of course." *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165 (2010). The Seventh Circuit has explained that the authority to issue nationwide injunctions stems from federal courts' power to grant equitable relief. *See City of Chicago v. Barr*, 961 F.3d 882, 912-14 (7th Cir. 2020). Though the Seventh Circuit has cautioned that, "[s]uch injunctions present real dangers, and will be appropriate only in rare circumstances," it explained that, "[i]n some circumstances, universal injunctions can be necessary to provide complete relief to plaintiffs, to protect similarly-situated nonparties, and to avoid the chaos and confusion that comes from a patchwork of injunctions." *City of Chicago v. Barr*, 961 F.3d 882, 916–17 (7th Cir. 2020) (internal quotations and citation omitted).

Questions from Senator Thom Tillis for Jeremy C. Daniel
Nominee to be United States District Judge for the Northern District of Illinois

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

   Response: Yes.

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

   Response: Black's Law Dictionary (11th ed. 2019) defines "judicial activism" as "A philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions, usu. with the suggestion that adherents of this philosophy tend to find constitutional violations and are willing to ignore governing texts and precedents." I do not think judicial activism is appropriate.

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

   Response: Impartiality is an expectation. Canon 2(A) of the Code of Conduct for United States Judges states, "A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

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

   Response: No.

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

   Response: Yes. If confirmed, I understand that any personal preferences that I may have play no role in the outcome of a given case. Rather, I must faithfully apply Supreme Court and Seventh Circuit precedent to the evidence presented by the parties.

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

   Response: No.

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

   Response: If confirmed, I would faithfully apply Supreme Court and Seventh Circuit

precedent. This includes the decisions in *District of Columbia v. Heller*, 554 U.S. 570 (2008) (holding that the District of Columbia's "ban on handgun possession in the home violates the Second Amendment," which protects the right to keep and bear arms for the purpose of self-defense), *McDonald v. Chicago*, 561 U.S. 742 (2010) ("we hold that the Second Amendment right is fully applicable to the States"), and *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111 (2022). In *Bruen*, the Supreme Court held, "In keeping with *Heller*, we hold that when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.'" *Bruen*, 142 S. Ct. 2111, 2126 (2022) (citation omitted).

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

   Response: I would faithfully apply Supreme Court and Seventh Circuit precedent. The Supreme Court has explained that, "officers are entitled to qualified immunity under § 1983 unless (1) they violated a federal statutory or constitutional right, and (2) the unlawfulness of their conduct was clearly established at the time. Clearly established means that, at the time of the officer's conduct, the law was sufficiently clear that every 'reasonable official would understand that what he is doing' is unlawful." *District of Columbia*. *v. Wesby*, 138 S. Ct. 577, 589 (2018) (internal quotations and citations omitted).

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

   Response: As a judicial nominee, it is not my place to opine as to whether qualified immunity provides sufficient protection to law enforcement officers. If confirmed and such an issue came before me, I would apply Supreme Court and Seventh Circuit precedent to the record before me.

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

    Response: Please see my answer to Question 9.

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

    Response: As a judicial nominee, it is not my place to opine on the current state of the Supreme Court's patent eligibility jurisprudence. If confirmed and such an issue came before me, I would apply Supreme Court and Federal Circuit precedent to the record before me. The Supreme Court has explained, "we set forth a framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts. First, we determine whether the claims at issue are directed to one of those patent-ineligible concepts. If so, we then ask, '[w]hat else is there in the claims before us?' To answer that question, we consider the elements of each claim both individually and 'as an ordered combination' to determine whether the additional elements 'transform the nature of the claim' into a patent-eligible application. We have described step two of this analysis as a search for an 'inventive concept'—i.e., an element or combination of elements that is 'sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.'" *Alice Corp. Pty. v. CLS Bank Int'l*, 573 U.S. 208, 217–18 (2014) (citations omitted).

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

    Response: Please see my answer to Question 11.

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

    a. **What experience do you have with copyright law?**

        Response: When in private practice, I counseled pro bono clients concerning copyright issues related to photographs. If confirmed and faced with matters concerning copyright law, I would apply Supreme Court and Seventh Circuit precedent to the record before me.

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

        Response: I have not had any experiences involving the DMCA. If confirmed

and such an issue came before me, I would apply Supreme Court and Seventh Circuit precedent to the record before me.

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

Response: None. If confirmed and such an issue came before me, I would apply Supreme Court and Seventh Circuit precedent to the record before me.

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

Response: Please see my answer to Question 13.a. If confirmed and such issues came before me, I would apply Supreme Court and Seventh Circuit precedent to the record before me.

14. **The legislative history of the Digital Millennium Copyright Act reinforces the statutory text that Congress intended to create an obligation for online hosting services to address infringement even when they do not receive a takedown notice. However, the Copyright Office reported that courts have conflated statutory obligations and created a "high bar" for "red flag knowledge, effectively removing it from the statute..." It also reported that courts have made the traditional common law standard for "willful blindness" harder to meet in copyright cases.**

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

Response: As the Supreme Court has instructed, "legislative history is not the law." *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1631 (2018). If confirmed, I would faithfully apply Supreme Court and Seventh Circuit precedent in deciding when to consider legislative history when interpreting a statutory provision. Legislative history plays no role in interpreting a statutory provision where the meaning of the statute's terms are plain. *Bostock v. Clayton Cnty., Georgia*, 140 S. Ct. 1731, 1749 (2020). If the text is ambiguous, then I would look to other sources authorized by the Supreme Court and the Seventh Circuit, including Supreme Court and Seventh Circuit cases interpreting similar laws, cases from other jurisdictions as persuasive authority, and accepted canons of statutory construction. In some instances, legislative history may serve as a historical source concerning the meaning of a term at the time the statute was enacted. *See Bostock*, 140 S. Ct. at 1350.

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

Response: The Chevron doctrine requires a court to grant deference to an agency's reasonable construction of an ambiguous statute even if the agency's reading differs from what the court believes is the best statutory interpretation. *Chevron, USA, Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 842-43 (1984). However, the Supreme Court subsequently explained in *W. Virginia v. Env't Prot. Agency* that it presumes that "Congress intends to make major policy decisions itself, not leave those decisions to agencies." 142 S. Ct. 2587, 2609 (2022). Moreover, interpretations that are not the product of formal adjudication or notice-and-comment rulemaking are relevant only for their persuasive authority. *Christensen v. Harris Cnty.*, 529 U.S. 576, 587 (2000).

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

Response: As a judicial nominee, the Code of Conduct for United States Judges prohibits me from making public comments on matters that may come before me if confirmed. If confirmed and such an issue came before me, I would apply Supreme Court and Seventh Circuit precedent to the record before me.

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

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

Response: If confirmed, I would look to Supreme Court and Seventh Circuit precedent to see whether the law's text has been addressed by binding precedent. If it hasn't, then I would determine whether the meaning of the statutory text is clear. If it is, then that ends the inquiry. If the text is ambiguous, then I would look to other sources authorized by the Supreme Court and the Seventh Circuit, including Supreme Court and Seventh Circuit cases interpreting similar laws, cases from other jurisdictions as persuasive authority, and accepted canons of statutory construction.

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

Response: If confirmed, I would look to Supreme Court and Seventh Circuit precedent to determine the framework in which to consider the issue presented. Courts often take fixed meanings and apply them to circumstances beyond those anticipated at the time of adoption. *See*, *e.g.*, *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2132 (2022) (explaining that the Constitution has a fixed meaning that applies to circumstances beyond those specifically anticipated at the time of adoption).

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

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

Response: Local Rule 40.1 in the Northern District of Illinois provides, "The rules of this Court and any procedures adopted by the Court that deal with the assignment and reassignment of cases shall be construed to secure an equitable distribution of cases, both in quantity and kind, among the judges. Except as specifically provided by the rules of this Court or by procedures adopted by the Court, the assignment of cases shall be by lot." There are more than twenty judges in the Northern District of Illinois, which prevents judge shopping.

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

Response: Please see my answer to Question 16.a.

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

Response: No.

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

Response: Please see my answer to Question 16.a. Moreover, Canon 2 of the Code of Conduct for United States Judges states, "A Judge Should Avoid Impropriety and the Appearance of Impropriety in all Activities." Canon 2(A) states, "A judge

should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Canon 3 states, "The judge should perform those duties with respect for others, and should not engage in behavior that is harassing, abusive, prejudiced, or biased." If confirmed, I would fairly and impartially adjudicate matters assigned to me by applying Supreme Court and Seventh Circuit precedent to the record before me.

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

Response: As a judicial nominee, it would be improper for me to offer an opinion concerning the practices of another court. If confirmed, I understand that cases would be randomly assigned to me.

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

Response: Please see my answer to Question 16.a.

Senate Judiciary Committee

"Nominations"

Questions for the Record

for Jeremy Daniel

to be United States District Judge for the Northern District of Illinois

QUESTIONS FROM SENATOR BLACKBURN

1. **Please describe your understanding of an originalist judicial philosophy.**

   Response: Black's Law Dictionary (11th ed. 2019) defines "originalism" as "The doctrine that words of a legal instrument are to be given the meanings they had when they were adopted; specif., the canon that a legal text should be interpreted through the historical ascertainment of the meaning that it would have conveyed to a fully informed observer at the time when the text first took effect. — Also termed doctrine of original public meaning; original-meaning doctrine; original public meaning."

2. **When, if ever, is it appropriate for a judge to take into account his or her lived experience when interpreting the law?**

   Response: If confirmed, I would not take into account my lived experience when interpreting the law. Rather, I would faithfully apply Supreme Court and Seventh Circuit precedent. In the absence of binding precedent, I would start with the text of the law to ascertain its plain meaning. For undefined terms, I would look to the ordinary, contemporary, common meaning at the time of enactment. *See United States v. Melvin*, 948 F.3d 848, 852 (7th Cir. 2020). If the text is ambiguous, then I would look to other sources authorized by the Supreme Court and the Seventh Circuit, including Supreme Court and Seventh Circuit cases interpreting similar laws, cases from other jurisdictions as persuasive authority, and accepted canons of statutory construction. I am not aware of any precedent that would authorize me to consider my lived experiences when interpreting the law.

3. **What is your understanding of the definition of "original public meaning"?**

   Response: Please see my answer to Question 1.

4. **When, if ever, is it appropriate for a judge to consider legislative history when interpreting a statutory provision?**

   Response: If confirmed, I would faithfully apply Supreme Court and Seventh Circuit precedent in deciding when to consider legislative history when interpreting a statutory provision. Legislative history plays no role in interpreting a statutory provision where the meaning of the statute's terms are plain. *Bostock v. Clayton Cnty., Georgia*, 140 S. Ct. 1731, 1749 (2020). If the text is ambiguous, then I would look to other sources authorized

by the Supreme Court and the Seventh Circuit, including Supreme Court and Seventh Circuit cases interpreting similar laws, cases from other jurisdictions as persuasive authority, and accepted canons of statutory construction. In some instances, legislative history may serve as a historical source concerning the meaning of a term at the time the statute was enacted. *See Bostock*, 140 S. Ct. at 1350.