

Senator Lindsey Graham, Ranking Member
Questions for the Record
Judge Robert J. White
Nominee to be United States District Judge for the Eastern District of Michigan

1. **Are you a citizen of the United States?**

Response: Yes.

2. **Are you currently, or have you ever been, a citizen of another country?**

Response: No.

- a. If yes, list all countries of citizenship and dates of citizenship.
- b. If you are currently a citizen of a country besides the United States, do you have any plans to renounce your citizenship?
 - i. If not, please explain why.

3. **Is it appropriate for a federal judge to consider an immutable characteristic of an attorney (such as race or sex) when deciding whether to grant oral argument? If yes, please describe in which circumstances such consideration would be appropriate.**

Response: No.

4. **Is it appropriate for a federal judge to consider an immutable characteristic of an attorney (such as race or sex) when deciding whether to grant additional oral argument time? If yes, please describe in which circumstances such consideration would be appropriate.**

Response: No.

5. **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 do not agree with the statement. District judges reach results based on the application of established Supreme Court and Sixth Circuit precedent, not their own value judgments.

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

Response: No. I am not familiar with the context with which this statement was made. However, if confirmed, I would faithfully apply the facts to the law in any case before me and follow all Sixth Circuit and Supreme Court precedent.

7. **Do you consider a law student’s public endorsement of or praise for an organization listed as a “Foreign Terrorist Organization,” such as Hamas or the Popular Front for the Liberation of Palestine, to be disqualifying for a potential clerkship in your chambers? Please provide a yes or no answer. If you would like to include an additional narrative response, you may do so, but only after a yes or no answer. Failure to provide a yes or no answer will be construed as a “no.”**

Response: Yes.

8. **In the aftermath of the brutal terrorist attack on Israel on October 7, 2023 the president of New York University’s student bar association wrote “Israel bears full responsibility for this tremendous loss of life. This regime of state-sanctioned violence created the conditions that made resistance necessary.” Do you consider such a statement, publicly made by a law student, to be disqualifying with regards to a potential clerkship in your chambers? Please provide a yes or no answer. If you would like to include an additional narrative response, you may do so, but only after a yes or no answer. Failure to provide a yes or no answer will be construed as a “no.”**

Response: Yes.

9. **Please describe the relevant law governing how a prisoner in custody under sentence of a federal court may seek and receive relief from the sentence.**

Response: Prisoners in custody may seek and receive relief from their sentences through multiple avenues. Pursuant to 28 U.S.C. § 2255, a prisoner can, for example, file a motion claiming ineffective assistance of counsel or prosecutorial misconduct, as a grounds to have his conviction (and by extension his sentence) revisited. Additionally, after the First Step Act, a prisoner may cite “extraordinary and compelling circumstances” which justify a compassionate release from custody. *See* 18 U.S.C. § 3582. The government may also move to have a sentence reduced pursuant to Fed. R. Cr. P. 35(b) where a prisoner provided post-sentencing substantial assistance, as would be the case with a prisoner who testified against a co-conspirator at a trial.

10. **Please explain the facts and holding of the Supreme Court decisions in *Students for Fair Admissions, Inc. v. University of North Carolina* and *Students for Fair Admissions Inc. v. President & Fellows of Harvard College*.**

Response: In *Students for Fair Admissions*, a nonprofit organization who had organizational standing on behalf of student-applicants, challenged the use of race as a factor in the admissions criteria at Harvard College and the University of North Carolina.

In applying a strict scrutiny analysis, the Supreme Court held that race-based admissions programs at Harvard and the University of North Carolina violated the Equal Protection Clause and Title VI of the Civil Rights Act. “Courts may not license separating students on the basis of race without an exceedingly persuasive justification that is measurable and concrete enough to permit judicial review.” *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 217 (2023).

11. **Have you ever participated in a decision, either individually or as a member of a group, to hire someone or to solicit applications for employment?**

Response: Yes.

If yes, please list each job or role where you participated in hiring decisions.

Response: As an associate at a small law firm, I interviewed potential replacements and ultimately trained the associate hired to replace me when I left for government service.

12. **Have you ever given preference to a candidate for employment or for another benefit (such as a scholarship, internship, bonus, promotion, or award) on account of that candidate’s race, ethnicity, religion, or sex?**

Response: No.

13. **Have you ever solicited applications for employment on the basis of race, ethnicity, religion, or sex?**

Response: No.

14. **Have you ever worked for an employer (such as a law firm) that gave preference to a candidate for employment or for another benefit (such as a scholarship, internship, bonus, promotion, or award) on account of that candidate’s race, ethnicity, religion, or sex?**

Response: No.

If yes, please list each responsive employer and your role at that employer. Please also describe, with respect to each employer, the preference given. Please state whether you played any part in the employer’s decision to grant the preference.

15. **Under current Supreme Court and Sixth Circuit precedent, are government classifications on the basis of race subject to strict scrutiny?**

Response: Yes. See, e.g., *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181 (2023); *Vitolo v. Guzman*, 999 F.3d 353 (6th Cir. 2021).

16. Please explain the holding of the Supreme Court’s decision in *303 Creative LLC v. Elenis*.

Response: In *303 Creative LLC*, a web designer expressed concern that a Colorado Anti-Discrimination law would compel her to create websites involving marriages she does not personally endorse. The Supreme Court held that the First Amendment prohibits the State of Colorado from enforcing an anti-discrimination law to the extent that it coerced and compelled a website designer to create a website endorsing a message she disagreed with. *303 Creative LLC v. Elenis*, 600 U.S. 570, 593 (2023).

17. In *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 642 (1943), Justice Jackson, writing for the Court, said: “If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.”

Is this a correct statement of the law?

Response: *West Virginia State Board of Education v. Barnette* is good law, and has not been overruled. In it, the Supreme Court held that a state board of education requirement that children salute the flag and give the pledge of allegiance was unconstitutional. 319 U.S. 624 (1943). If confirmed, I will follow all appropriate Sixth Circuit and Supreme Court precedent.

18. How would you determine whether a law that regulates speech is “content-based” or “content-neutral”? What are some of the key questions that would inform your analysis?

Response: Government regulations of speech are content neutral if they are “justified without reference to the content or viewpoint of the regulated speech.” *Saieg v. City of Dearborn*, 641 F.3d 727, 735 (6th Cir. 2011) (internal citations omitted). “The government’s purpose is the controlling consideration” when determining whether or not the regulation is content neutral. *Id.* (internal citations omitted).

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

Response: “True threats’ encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a

particular individual or group of individuals.” *Virginia v. Black*, 538 U.S. 343, 359 (2003). “The speaker need not actually intend to carry out the threat. Rather, a prohibition on true threats ‘protect[s] individuals from the fear of violence’ and ‘from the disruption that fear engenders,’ in addition to protecting people ‘from the possibility that the threatened violence will occur.’” *Id.* at 359–360.

- 20. Under Supreme Court and Sixth Circuit precedent, what is a “fact” and what sources do courts consider in determining whether something is a question of fact or a question of law?**

Response: Facts are evidence which can be admitted into the record by a trial court. When determining whether something is a question of fact, a question of law, or a mixed question of fact and law for purposes of review, I would follow all Sixth Circuit and Supreme Court precedent, noting the standard of review for a mixed question all depends—on whether answering it entails primarily legal or factual work. *U.S. Bank Nat. Ass'n ex rel. CWC Capital Asset Mgmt. LLC v. Vill. at Lakeridge, LLC*, 583 U.S. 387, 396 (2018).

- 21. Which of the four primary purposes of sentencing—retribution, deterrence, incapacitation, and rehabilitation—do you personally believe is the most important?**

Response: If confirmed, I will apply 18 U.S.C. § 3553 in all cases at the sentencing phase, in addition to calculating the appropriate sentencing guidelines, reviewing any sentencing memoranda, and considering oral argument and allocution. As Congress made no distinction about which, if any, factors should receive more weight than any other, I would give all of the factors equal consideration, while following any Sixth Circuit and Supreme Court precedent.

- 22. Please identify a Supreme Court decision from the last 50 years that you think is particularly well-reasoned and explain why.**

Response: As a judicial nominee, the Code of Conduct for United States Judges prohibits me from commenting on expressing a personal opinion about the quality of a case. If confirmed, I would follow all Sixth Circuit and Supreme Court precedent.

- 23. Please identify a Sixth Circuit judicial opinion from the last 50 years that you think is particularly well-reasoned and explain why.**

Response: As a judicial nominee, the Code of Conduct for United States Judges prohibits me from commenting on expressing a personal opinion about the quality of a case. If confirmed, I would follow all Sixth Circuit and Supreme Court precedent.

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

Response: 18 USC § 1507 criminalizes “interfering with, obstructing, or impeding the administration of justice” and also prohibits picketing and parading “with the intent of influencing any judge, juror, witness, or court officer” in or near a building or residence they occupy.

25. Is 18 U.S.C. § 1507 constitutional?

Response: I am not aware of any Sixth Circuit or Supreme Court precedent examining the constitutionality of the picketing or parading statute. In *Cox v. Louisiana*, the Supreme Court found a similar state statute was constitutional. 379 U.S. 536 (1965). If confirmed, I would follow any Sixth Circuit or Supreme Court precedent which determines the constitutionality of 18 U.S.C. § 1507.

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

- a. Was *Brown v. Board of Education* correctly decided?
- b. Was *Loving v. Virginia* correctly decided?
- c. Was *Griswold v. Connecticut* correctly decided?
- d. Was *Roe v. Wade* correctly decided?
- e. Was *Planned Parenthood v. Casey* correctly decided?
- f. Was *Gonzales v. Carhart* correctly decided?
- g. Was *District of Columbia v. Heller* correctly decided?
- h. Was *McDonald v. City of Chicago* correctly decided?
- i. Was *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* correctly decided?
- j. Was *New York State Rifle & Pistol Association v. Bruen* correctly decided?
- k. Was *Dobbs v. Jackson Women’s Health* correctly decided?
- l. Were *Students for Fair Admissions, Inc. v. University of North Carolina* and *Students for Fair Admissions Inc. v. President & Fellows of Harvard College* correctly decided?
- m. Was *303 Creative LLC v. Elenis* correctly decided?

Response to subparts (a)-(m): As a judicial nominee, the Code of Conduct for United States Judges generally precludes me from providing an opinion about the correctness of a Supreme Court decision. There are some cases that are unlikely to be relitigated, such as *Brown v. Board of Education*, and *Loving v. Virginia*, because they are fundamental to our legal system; in those instances, I believe I can express my opinion that they were both correctly decided. *Roe v. Wade* and *Planned Parenthood v. Casey* were both subsequently overruled by *Dobbs v. Jackson Women’s Health*; if confirmed, I would follow Sixth Circuit and Supreme Court precedent, to include *Dobbs*.

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

Response: Under *Bruen*, “when the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct.” *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1, 17 (2022). In evaluating whether or not a regulation or statutory provision infringes on Second Amendment rights, the government bears the burden to “affirmatively prove that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms.” *Id.* at 19. If confirmed, I would follow Supreme Court and Sixth Circuit precedent in the application of any cases involving the Second Amendment.

28. 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? If so, who?**

Response: No.

- c. **Have you ever been in contact with anyone associated with Demand Justice? If so, who?**

Response: No.

29. 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? If so, who?**

Response: No.

- c. **Have you ever been in contact with anyone associated with Demand Justice? If so, who?**

Response: No.

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

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

Response: No.

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

Response: No.

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

Response: No.

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

Response: No.

31. **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.

32. **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? If so, who?**

Response: No.

- c. **Have you ever been in contact with anyone associated with Fix the Court? If so, who?**

Response: No.

33. **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 July, 2023, I submitted an application to Senator Debbie Stabenow’s office for an opening on the United States District Court for the Eastern District of Michigan. On September 6, 2023, I interviewed with the Eastern District of Michigan Judicial Advisory Committee. On October 10, 2023, I received an email communication from the White House Counsel’s Office and interviewed with attorneys from that office shortly thereafter. Since November 17, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On January 8, 2024, I received a phone call from Senator Stabenow, updating me on the status of the process. On January 10, 2024, the President announced his intent to nominate me.

34. 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.

35. 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.

36. 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.

37. 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.

38. 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.

39. Since you were first approached about the possibility of being nominated, did anyone associated with the Biden administration or Senate Democrats give you advice about which cases to list on your committee questionnaire?

Response: No.

- a. If yes,
 - i. Who?
 - ii. What advice did they give?
 - iii. Did they suggest that you omit or include any particular case or type of case in your questionnaire?

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

Response: In July, 2023, I submitted an application to Senator Debbie Stabenow's office for an opening on the United States District Court for the Eastern District of Michigan. On September 6, 2023, I interviewed with the Eastern District of Michigan Judicial Advisory Committee. On October 10, 2023, I received an email communication from the White House Counsel's Office and interviewed with attorneys from that office shortly thereafter. Since November 17, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On January 8, 2024, I received a phone call from Senator Stabenow, updating me on the status of the process. On January 10, 2024, the President announced his intent to nominate me.

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

Response: I received questions from Senators on the Judiciary Committee from the Office of Legal Policy at the Department of Justice on February 15, 2024. I drafted my responses and submitted them to the Office of Legal Policy. I made revisions in response to comments from the Office of Legal Policy, after which I finalized the questions and submitted the response.

**Senate Judiciary Committee
Nominations Hearing
February 8, 2024
Questions for the Record
Senator Amy Klobuchar**

For Robert White, nominee to be U.S. District Judge for the Eastern District of Michigan
Since 2018, you have served as an Assistant U.S. Attorney in the Eastern District of Michigan. Before that, you also served in the U.S. Attorney’s Office for the Western District of Texas.

- **How will your experience as a federal prosecutor inform your approach to interpreting and applying the law?**

Response: Since 2014, I have had the privilege of serving as an Assistant United States Attorney in two districts (in separate circuits), with service that spanned over three presidential administrations, and four presidentially appointed, senate-confirmed U.S. Attorneys.

Throughout that time, I have prosecuted the full complement of federal criminal cases, from organized crime and RICO conspiracies to financial crimes. Because of the wide array of cases I have prosecuted, in different circuits, through different administrations, I have had to continually study the law as applied in a circuit specific context and conform my application of the law to any pertinent Department of Justice guidance.

In addition to continually studying and applying existing law, I have also had to apply new laws, such as the First Step Act, and interpret newly defined statutory terms, such as what constitutes “extraordinary and compelling” circumstances to justify compassionate release.

If confirmed, I commit to continued study of new and existing law, and I will follow all binding Sixth Circuit and U.S. Supreme Court precedent.

Senator Jon Ossoff
Questions for the Record for Robert White
February 8, 2024

1. Will you pledge to faithfully apply the law without bias and without regard for your personal policy or political preferences?

Response: Yes. I pledge to faithfully apply the law without bias and without regard for any personal policy or political preferences I might hold.

2. How will you approach First Amendment cases?

Response: Cases involving First Amendment protected activity, as in the case of a regulation involving the establishment or free exercise of religion, will often trigger a strict scrutiny analysis. However, my approach to all cases will be the same, in that I will approach every case with an open mind, consider the arguments of the parties, ensure that I have read their briefs and studied the appropriate legal authority, and follow any Sixth Circuit or Supreme Court precedent in arriving at a ruling.

a. In your view, why are First Amendment protections of freedom of speech, publication, assembly, and exercise of religion vital in our society?

Response: First Amendment protections are vital in our society because so many of our other rights are a direct result of activity the First Amendment protects. Changes in law and policy that reflect the will of the people are only possible where, in countries like the United States, the people can openly criticize the government in writing or with speech, assemble, march, protest, and petition the government for redress.

3. In your experience, why is it critical that indigent defendants have access to public defense under the Sixth Amendment right to counsel and precedent set in *Gideon v. Wainwright*?

Response: As a defense attorney, our firm made a point to take both *pro bono* matters and appointments pursuant to the Criminal Justice Act. The CJA panel, *Gideon v. Wainwright*, and also *Strickland v. Washington* 466 U.S. 668 (1984), which ensures the effective assistance of counsel, give life to the Sixth Amendment. Indigent defendants who cannot afford counsel must be provided with attorneys who can investigate and review discovery, negotiate on their behalf, file dispositive motions, and have the experience to try cases to verdict. The right to effective assistance of counsel also provides a critical benefit to the public, and establishes a level of confidence in a verdict, with the knowledge both sides were represented.

4. In your experience, what are the challenges faced by parties in civil or criminal proceedings for whom English is not their first language?

Response: As both a prosecutor and defense attorney, I have personally handled matters involving cases where English was not the first language of the defendant. Depending on the language and the availability of interpreters, cases can take longer to resolve. Courts should be responsive to the parties needs where additional time is required because of a language issue. For example, in instances where a defendant is detained in a criminal proceeding, jail visits may be more difficult to schedule given the availability of an interpreter.

a. What do you see as the role of language access in courts in protecting due process rights and ensuring access to justice?

Response: Courts have a critical role in ensuring due process and access to justice, particularly in cases where English is not the first language of a defendant. For example, even where the defense attorney can communicate with his client in his first language, it is still prudent to have a professional translation of an important document like a plea agreement. Similarly, at trial, even if the defendant is not testifying, the Court must ensure that the pace of the trial is such that the interpreter can, in as close to real time as possible, translate testimony so a defendant can participate in his defense.

Senator Mike Lee
Questions for the Record
Robert J. White, Nominee for District Court Judge for the Eastern District of Michigan

1. How would you describe your judicial philosophy?

Response: Litigants and lawyers who come before the Court deserve to be treated with respect and fairness. With every case that came before me, I would read the parties' briefs, listen carefully to the arguments of counsel, and then conduct my own independent research—consulting any relevant Sixth Circuit and Supreme Court decisions, and, if appropriate, persuasive authority from other courts, before coming to a decision.

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

Response: In our system of government, it is Congress's role to make the laws, and it is the judiciary's role to interpret them. Keeping that in mind, I would always start with reading the plain text of the statute and applying any binding decisions of the Sixth Circuit and Supreme Court. If appropriate, I would then look to persuasive authority from other Circuits, or other tools of statutory interpretation.

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

Response: I would always start with reading the plain text of the constitutional provision and applying any binding Sixth Circuit and Supreme Court. If appropriate, I would consider persuasive authority from other Circuits. Finally, in certain circumstances where the Supreme Court has directed, I would look to history and tradition. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008); *Crawford v. Washington*, 541 U.S. 36 (2004).

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

Response: The text of a constitutional provision, and any binding Sixth Circuit and Supreme Court decisions, are the starting point. Additionally, where the Supreme Court and Sixth Circuit have directed the use of certain interpretive tools like the original public meaning, I would fully and faithfully follow that precedent. *See, e.g., Crawford v. Washington*, 541 U.S. 36 (2004).

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

Response: I would first look to any binding precedent of the Sixth Circuit and Supreme Court. If that did not definitively resolve the question with which I was

confronted, I would first look to the plain text of the statute. Where the plain meaning of the text is unambiguous, the analysis ends there.

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

Response: The Supreme Court “normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment. After all, only the words on the page constitute the law adopted by Congress and approved by the President.” *Bostock v. Clayton Cnty., Georgia*, 590 U.S. 644, 654 (2020). Where the Supreme Court or Sixth Circuit had addressed the “plain meaning” of a specific statute, that decision is controlling.

7. What are the constitutional requirements for standing?

Response: The case-or-controversy requirement of Article III of the Constitution generally has three requirements. First, “the plaintiff must have suffered an ‘injury in fact[.]’” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). Second, “there must be a causal connection between the injury and the conduct complained of[.]” *Id.* Third, and finally, it must be ‘likely,’ as opposed to merely ‘speculative,’ that the injury will be ‘redressed by a favorable decision.’” *Id.*

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

Response: Yes, pursuant to the Constitution’s Necessary and Proper Clause and the Supreme Court’s decision in *M’Culloch v. State*. “Even without the aid of the general clause in the constitution, empowering congress to pass all necessary and proper laws for carrying its powers into execution, the grant of powers itself necessarily implies the grant of all usual and suitable means for the execution of the powers granted.” *M’Culloch v. State*, 17 U.S. 316, 323–24 (1819).

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

Response: 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 (2012). Where the Supreme Court or Sixth Circuit had addressed a specific Constitutional enumerated power, that decision is controlling.

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

Response: Yes. The Supreme Court has held that rights protected under substantive due process are those “fundamental rights and liberties which are, objectively, deeply rooted in this Nation’s history and tradition.” *Washington v. Glucksberg*, 521 U.S. 702, 703 (1997).

11. What rights are protected under substantive due process?

Response: The Supreme Court has held that rights protected under substantive due process are those “fundamental rights and liberties which are, objectively, deeply rooted in this Nation’s history and tradition.” *Washington v. Glucksberg*, 521 U.S. 702, 703 (1997). These include the right to marry, the right to parent, and the right not to be sterilized without consent. See *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 256-57 (2022).

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

Response: The Supreme Court rejected the *Lochner* analysis in *W. Coast Hotel Co. v. Parrish*, 300 U.S. 379, 392 (1937) (citing cases). In *Griswold v. Connecticut*, the Supreme Court identified a right to contraceptives which emanated from the zone of privacy created by several fundamental constitutional guarantees. 381 U.S. 479, 485 (1965) If confirmed, I will follow all applicable Supreme Court and Sixth Circuit precedent.

13. What are the limits on Congress’s power under the Commerce Clause?

Response: The Supreme Court has identified three categories of activity that Congress may regulate under its commerce clause power. First, the use of the channels of interstate commerce. Second, the instrumentalities of interstate commerce. Third, and finally, Congress can regulate activity having a substantial relation to interstate commerce. *United States v. Lopez*, 514 U.S. 549 (1995).

14. What qualifies a particular group as a “suspect class,” such that laws affecting that group must survive strict scrutiny?

Response: The Supreme Court has stated that “the traditional indicia of suspectedness” are an ‘immutable characteristic determined solely by the accident of birth,’ such that the class is “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[.]” *Johnson v. Robison*, 415 U.S. 361, 375, n.14 (1974).

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

Response: The “separation and independence of the coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in any one branch[.]” *Gregory v. Ashcroft*, 501 U.S. 452, 458 (1991).

16. 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: If confirmed, I will follow controlling Supreme Court and Sixth Circuit precedent on the appropriate division of constitutional authority among the three branches of government.

17. What role should empathy play in a judge’s consideration of a case?

Response: If confirmed, I will follow controlling Supreme Court and Sixth Circuit precedent without regard to any personal feelings or sentiments I might hold.

18. Which is worse; invalidating a law that is, in fact, constitutional, or upholding a law that is, in fact, unconstitutional?

Response: Neither is an acceptable outcome. If confirmed, I would faithfully apply binding Sixth Circuit and Supreme Court precedent to avoid invalidating constitutional laws and upholding unconstitutional laws.

19. 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 evaluated the use of the Supreme Court’s power over the length of its existence, and as such, do not have the foundation from which I can provide an opinion. An “aggressive” exercise of judicial review by the Supreme Court may infringe on Congressional authority. And judicial “passivity” could allow Congress to exercise authority beyond its Constitutionally prescribed limits.

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

Response: Judicial review was established by the Supreme Court in *Marbury v. Madison*, 5 U.S. 137 (1803). It is defined as “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.” Black’s Law Dictionary (11th ed. 2019). Judicial supremacy is a doctrine that “interpretations of the Constitution by the federal judiciary in the exercise of judicial review, esp. U.S.

Supreme Court interpretations, are binding on the coordinate branches of the federal government and the states.” Black’s Law Dictionary (11th ed. 2019).

- 21. 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: As a judicial nominee, the Judicial Code of Conduct prohibits me from opining on political and policy matters. If confirmed, I will follow all binding Sixth Circuit and Supreme Court precedent on any issue before me. In *Cooper v. Aaron*, the Supreme Court reaffirmed the obligation of elected officials to follow duly rendered judicial decisions. 358 U.S. 1, 18 (1958).

- 22. 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: Generally, the judicial branch is limited to applying facts to laws passed by Congress, or to reviewing the constitutionality of executive action. When fulfilling the Constitutionally prescribed Article III function, it is important to only rule on the case and controversy before the court.

- 23. As a federal judge, you would be bound by both Supreme Court precedent and prior circuit court precedent. What is the duty of a federal 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 federal judge extend the precedent to cover new cases, or limit its application where appropriate and reasonably possible?**

Response: It is not the role of the district court to “extend” a precedent established by the Supreme Court or Circuit Court. That is a decision for a Circuit Court or the Supreme Court. Similarly, a district court should not limit the application of a Supreme Court or Circuit Court precedent.

- 24. 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. In imposing a sentence, I would consider the factors set forth in 18 U.S.C. § 3553(a).

- 25. 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 the quoted language contained in the statement above. As a judicial nominee, the Judicial Code of Conduct prohibits me from opining on political and policy matters, including an elected official’s definition of “equity.” The Merriam-Webster online dictionary defines “equity” as “freedom from bias or favoritism,” and “equality” as “the quality or state of being equal.” Merriam-Webster.com Dictionary, Merriam-Webster. Accessed 18 Feb. 2024. If confirmed, I will follow all binding Sixth Circuit and Supreme Court precedent on any issue before me.

- 26. Without citing Black’s Law Dictionary, do you believe there is a difference between “equity” and “equality?” If so, what is it?**

Response: The Merriam-Webster online dictionary defines “equity” as “freedom from bias or favoritism,” and “equality” as “the quality or state of being equal.” Merriam-Webster.com Dictionary, Merriam-Webster. Accessed 18 Feb. 2024.

- 27. Does the 14th Amendment’s equal protection clause guarantee “equity” as defined by the Biden Administration (listed above in question 25)?**

Response: I am not familiar with the quoted language contained in the statement above. I am not aware of any Supreme Court or Sixth Circuit authority that holds that the 14th Amendment’s equal protection clause guarantees “equity” as is defined in question 25. If confirmed, I will follow all binding Sixth Circuit and Supreme Court precedent on the application of 14th Amendment’s equal protection clause.

- 28. Without citing Black’s Law Dictionary, how do you define “systemic racism?”**

Response: The Merriam-Webster online dictionary defines “systemic racism” as “the oppression of a racial group to the advantage of another as perpetuated by inequity within interconnected systems[.]” “Systemic racism.” Merriam-Webster.com Dictionary, Merriam-Webster. Accessed 16 Feb. 2024.

29. Without citing Black's Law Dictionary, how do you define "critical race theory?"

Response: The Merriam-Webster online dictionary defines "critical race theory" as "a group of concepts used for examining the relationship between race and the laws and legal institutions of a country and especially the United States[.]" "Critical race theory." Merriam-Webster.com Dictionary, Merriam-Webster. Accessed 16 Feb. 2024.

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

Response: Please see my responses to Questions 28 and 29.

**Senator John Kennedy
Questions for the Record**

Robert White

- 1. Are there any circumstances under which it is justifiable to sentence a criminal defendant to death? Please explain.**

Response: Yes. Certain offenses, such as violent crimes in aid of racketeering, provide for punishment to include life imprisonment or death. Where a jury unanimously finds that aggravating factors outweigh any mitigating factors, and recommends death, the court shall sentence the defendant accordingly. *See* 18 U.S.C. §§ 3592-3594.

- 2. Should a judge's opinions on the morality of the death penalty factor into the judge's decision to sentence a criminal defendant to death in accordance with the laws prescribed by Congress and the Eighth Amendment?**

Response: No.

- 3. Is the U.S. Supreme Court a legitimate institution?**

Response: Yes.

- 4. Is the current composition of the U.S. Supreme Court legitimate?**

Response: Yes.

- 5. Please describe your judicial philosophy. Be as specific as possible.**

Response: Litigants and lawyers who come before the Court deserve to be treated with respect and fairness. With every case that came before me, I would read the parties' briefs, listen carefully to the arguments of counsel, and then conduct my own independent research—consulting any relevant Sixth Circuit and Supreme Court decisions, and, if appropriate, persuasive authority from other courts—before coming to a decision.

- 6. Is originalism a legitimate method of constitutional interpretation?**

Response: Originalism is one of the methods courts use to interpret constitutional provisions. If confirmed, I would faithfully apply any precedent from the Sixth Circuit and the Supreme Court. Where, for example, the Supreme Court used an originalist method of constitutional interpretation, I would follow that precedent. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008); *Crawford v. Washington*, 541 U.S. 36 (2004).

7. If called on to resolve a constitutional question of first impression with no applicable precedents from either the U.S. Supreme Court or the U.S. Courts of Appeals, to what sources of law would you look for guidance?

Response: In the unlikely event I am called upon to examine a constitutional question of first impression with no applicable precedents from the Supreme Court or any Court of Appeals, I would start with the text of the relevant constitutional provision. Then I would look to cases where the Sixth Circuit and the Supreme Court have interpreted similarly worded constitutional provisions.

8. Is textualism a legitimate method of statutory interpretation?

Response: Textualism is one of several methods used to interpret constitutional provisions. If confirmed, I would faithfully apply any precedent from the Sixth Circuit and Supreme Court. Where, for example, the Supreme Court used a textualist method of statutory interpretation, I would follow that precedent. *See, e.g., Bostock v. Clayton County*, 590 U.S. 644 (2020).

9. When is it appropriate for a judge to look beyond textual sources when determining the meaning of a statute or provision?

Response: In interpreting a statute, a judge should begin with the text. If the text is unambiguous, the analysis is done. If the text is ambiguous, it may be appropriate to look to other canons of construction. I would follow Sixth Circuit and Supreme Court precedent with regard to means of statutory interpretation. *See, e.g., Bostock v. Clayton County*, 590 U.S. 644, 674-76 (2020).

10. Does the meaning (rather than the applications) of the U.S. Constitution change over time? If yes, please explain the circumstances under which the U.S. Constitution's meaning changes over time and the relevant constitutional provisions.

Response: The Constitution's "meaning is fixed according to the understands of those who ratified it." *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 28 (2022). If confirmed, I'd follow the appropriate Sixth Circuit and Supreme Court precedent.

11. Please describe the legal rule employed in *Rivas-Villegas v. Cortesluna*, 595 U.S. 1 (2021), and explain why the U.S. Supreme Court sided with the Petitioner.

Response: In *Rivas-Villegas*, the Supreme Court was confronted with a case involving qualified immunity. "Qualified immunity attaches when an official's conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Rivas-Villegas v. Cortesluna*, 595 U.S. 1, 5 (2021). The Supreme Court found that the facts below were not sufficiently similar to any established precedent, such that the officer should have known he was violating a clearly established right.

12. When is it appropriate for a district judge to issue a nationwide injunction? Please also explain the legal basis for issuing nationwide injunctions and the relevant factors a district judge should consider before issuing one.

Response: I am aware that some district courts have issued nationwide injunctions. When deciding to issue an injunction, I would follow Fed. R. Civ. P. 65, which governs injunctions and restraining orders. In deciding whether to issue an injunction, and in considering the scope an injunction, I would faithfully apply Sixth Circuit and Supreme Court precedent.

13. Is there ever a circumstance in which a district judge may seek to circumvent a published precedent of the U.S. Court of Appeals under which it sits or the U.S. Supreme Court?

Response: No.

14. Will you faithfully apply all precedents of the U.S. Supreme Court and the U.S. Court of Appeals for the Sixth Circuit?

Response: Yes.

15. If confirmed, please describe what role U.S. Supreme Court dicta would play in your decisions.

Response: If confirmed, I would be bound by and apply the holdings of the U.S. Supreme Court and Sixth Circuit. I would give respectful consideration to dicta, as it may help inform my analysis or application of holdings. *See generally Cohens v. Virginia*, 19 U.S. 264, 399 (1821) (Marshall, C.J.) (“It is a maxim not to be disregarded, that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision.”).

16. When reviewing applications from persons seeking to serve as a law clerk in your chambers, what role if any would the race, sex, or religion of the applicants play in your consideration?

Response: None.

17. Why should Senator Kennedy support your nomination?

Response: Since 2014, I have faithfully supported the Constitution by applying our laws without fear or favor as an Assistant United States Attorney. My service has stretched

multiple administrations, in multiple jurisdictions, and in that capacity, I have gained a significant amount of experience at every stage of federal litigation, to include multiple federal jury trials. Prior to 2014, I served as a defense attorney. In those roles, I have managed significant discovery productions, supervised complex investigations, litigated the full complement of dispositive motions and motions in limine, conducted voir dire, examined lay and expert witnesses, given opening statements, and closing arguments. These experiences have prepared me to continue my public service as a federal trial judge.