**Senator Lindsey Graham, Ranking Member**
**Questions for the Record**
**Ms. Georgia Nick Alexakis**
**Nominee to be United States District Judge for the Northern District of Illinois.**

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?**
   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.**

   Response to Question 2 and all subparts: I have never been a citizen of another country.

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. **Is it ever appropriate to consider foreign law in constitutional interpretation? If yes, please describe in which circumstances such consideration would be appropriate.**

   Response: It is generally inappropriate to consider foreign law when interpreting the Constitution. I am aware, though, that the Supreme Court has considered historical laws of England when evaluating the original public meaning of constitutional provisions, such as the Second Amendment and the Sixth Amendment's Confrontation Clause. *See, e.g.*, *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022); *Giles v. California*, 554 U.S. 353 (2008).

6. **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 disagree. If confirmed, I would follow Supreme Court and Seventh Circuit precedent when interpreting the Constitution. I would not exercise "[my] own independent value judgments."

7. **In a concurrence in the denial of rehearing en banc in *Al–Bihani v. Obama* then-Judge Kavanaugh wrote: "international-law norms are not domestic U.S. law in the absence of action by the political branches to codify those norms." Is this a correct statement of law?**

   Response: Yes. *See Sosa v. Alvarez-Machin*, 542 U.S. 692, 735-36 (2004); *Ludecke v. Watkins*, 335 U.S. 160, 168-70 (1948).

8. **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.

9. **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.

10. **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.

11. **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: A prisoner in custody under a sentence of a federal court may seek and receive relief from the sentence under the following federal statutes: a direct appeal of the district court judgment to the court of appeals under 28 U.S.C. § 1291; a motion to vacate, set aside, or correct the sentence under 28 U.S.C. § 2255; a petition for writ of habeas corpus under 28 U.S.C. § 2241; and a motion for compassionate release for modification of a term of imprisonment under 18 U.S.C. § 3582(c).

**12. 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: Petitioner Students for Fair Admissions, a nonprofit organization, sued respondents University of North Carolina and Harvard College, alleging that the universities' admissions policies violated the Equal Protection Clause of the Fourteenth Amendment and Title VI of the Civil Rights Act of 1964 by using race as a factor in admissions. The Supreme Court jointly decided these cases, concluding that the admissions policies were unconstitutional and violated the Equal Protection Clause. *See Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181, 213-25 (2023). The Supreme Court explained that the admissions policies failed to satisfy strict scrutiny because the interests underlying those policies, which the universities viewed as compelling, could not be subjected to meaningful judicial review; the universities failed to demonstrate a meaningful connection between the means they employed and the goals they pursued; and the universities' admissions policies resulted in negative racial stereotyping and offered no logical endpoint. *Id.* at 214-25.

**13. 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 Assistant United States Attorney, I have interviewed candidates for Assistant United States Attorney positions in the United States Attorney's Office for the Northern District of Illinois. As a partner at Riley Safer Holmes & Cancila LLP, I interviewed candidates for associate and partner positions. As a partner and associate at Bartlit Beck Herman Palenchar & Scott LLP, I interviewed candidates for associate positions. As an associate and consultant at the Boston Consulting Group, I interviewed candidates for associate and consultant positions. In each of these roles, I provided feedback to supervisors regarding the candidates based on interviews I conducted and application materials provided by the candidates that I was asked to review. My supervisors made the final hiring decisions.

**14. 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, sex, sexuality, or gender identity?**

Response: No.

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

Response: No.

**16. 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, sex, sexuality, or gender identity?**

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.**
>
> Response: Not applicable.

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

Response: Yes. *See Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181 (2023); *Hope v. Comm'r of Indiana Dep't of Corr.*, 9 F.4th 513, 529 (7th Cir. 2021).

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

Response: In *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023), the Supreme Court concluded that forcing a website designer, under Colorado's Anti-Discrimination Act ("CADA"), to design websites celebrating same-sex weddings, which were contrary to the designer's beliefs, would violate the designer's First Amendment rights under the Free Speech Clause. The Court explained that CADA impermissibly sought "to force an individual to speak in ways that align with its views but defy her conscience about a matter of major significance." *Id.* at 602-03.

**19. 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: The Supreme Court cited *Barnette* in *303 Creative LLC v. Elenis*, 600 U.S. 570, 585 (2023). *Barnette* is binding precedent. If confirmed, I would faithfully apply all binding precedent of the Supreme Court and the Seventh Circuit.

**20. 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: Under the First Amendment, courts must consider the text of the law. If a law regulating expression is "content-based," then the law is subject to strict scrutiny, and if a law is "content-neutral," it is subject to intermediate scrutiny. "Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed." *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 163 (2015). However, the Supreme Court has also stated that, although a law may appear content-neutral on its face, the law will be considered content-based if it "cannot be justified without reference to the content of the regulated speech" or if it was "adopted by the government because of disagreement with the message [the speech] conveys." *Id.* at 164 (internal quotation marks omitted). "Thus, a speech regulation targeted at specific subject matter is content based even if it does not discriminate among viewpoints within that subject matter." *Id.* at 169; *see also City of Austin, Tx. v. Reagan Nat'l Advertising of Austin, LLC*, 596 U.S. 61, 76 (2022) ("If there is evidence that an impermissible purpose or justification underpins a facially content-neutral restriction, for instance, that restriction may be content based.").

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

Response: "True threats are 'serious expression[s]' conveying that a speaker means to 'commit an act of unlawful violence.'" *Counterman v. Colorado*, 600 U.S. 66, 74 (2023) (quoting *Virginia v. Black*, 538 U.S. 343, 359 (2003) (alteration in original)). The First Amendment does not protect "true threats." *Id.* "When the statement is understood as a true threat, all the harms that have long made threats unprotected naturally follow. True threats subject individuals to 'fear of violence' and to the many kinds of 'disruption that fear engenders." *Id.* (quoting *Black*, 538 U.S. at 359 (internal quotation marks omitted)).

In *Counterman*, the Supreme Court held that the First Amendment requires proof that the defendant had a subjective understanding of the threatening nature of his statements. *Id.* at 71-83. A mental state of recklessness is sufficient because "[i]t offers enough 'breathing space' for protected speech, without sacrificing too many of the benefits of enforcing laws against true threats." *Id.* at 82 (quoting *Elonis v. United States*, 575 U.S. 723, 748 (2015) (internal quotation marks omitted)).

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

Response: Facts are "questions of who did what, when or where, how or why." *U.S. Bank Nat'l Ass'n ex rel. CWCapital Asset Mgmt. LLC v. Vill. at Lakeridge, LLC*, 583 U.S. 387, 394 (2018); *see also Moore v. Madigan*, 702 F.3d 933, 942 (7th Cir. 2012) (describing "facts" as "concerning the conduct of parties in a particular case"). In contrast, questions of law are "issue[s] to be decided by the judge, concerning the application or interpretation of the law." Black's Law Dictionary (11th ed. 2019). The Supreme Court has recognized that "the distinction between questions of fact and questions of law" can be "vexing." *See Pullman-Standard v. Swint*, 456 U.S. 273, 288 (1982); *see also Thompson v. Keohane*, 516 U.S. 99, 110-11 (1995); *United States v. Vivirito*, 65 F.4th 341, 343 (7th Cir. 2023). For mixed questions of law and fact, a court must attempt to "break such a question into its separate factual and legal parts," and "when a question can be reduced no further," determine "'whether answering it involves primarily legal or factual work.'" *See Google LLC v. Oracle Am., Inc.*, 141 S. Ct. 1183, 1199 (2021) (quoting *U.S. Bank Nat'l Ass'n*, 583 U.S. at 396).

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

Response: Congress has identified all four purposes as goals of the sentencing process, and I do not understand Congress to have directed that one purpose is entitled to greater weight than another. *See* 18 U.S.C. § 3553(a)(2)(A)-(D); 18 U.S.C. § 3551 (directing that a defendant "be sentenced in accordance with the provisions of this chapter so as to achieve the purposes set forth in [§ 3553(a)(2)(A-D)] to the extent that they are applicable in light of all the circumstances of the case"). If confirmed, binding 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.

**24. 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, I am precluded from commenting on the quality of the reasoning of any particular Supreme Court decision under Canon 3(A)(6) of Code of Conduct for United States Judges. If confirmed, I would faithfully follow binding Supreme Court and Seventh Circuit precedent.

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

Response: As a judicial nominee, I am precluded from commenting on the quality of the reasoning of any particular Seventh Circuit decision under Canon 3(A)(6) of Code of Conduct for United States Judges. If confirmed, I would faithfully follow binding Supreme Court and Seventh Circuit precedent.

**26. 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.

**27. Is 18 U.S.C. § 1507 constitutional?**

Response: Based on my research, I have not identified Supreme Court or Seventh Circuit precedent holding that 18 U.S.C. § 1507 is unconstitutional. In *Cox v. Louisiana*, the Supreme Court reviewed a state statute "modeled after a bill pertaining to the federal judiciary." 379 U.S. 559, 561 (1965) (citing § 1507). In so doing, the Court stated: "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." *Id.* at 563.

**28. 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 a judicial nominee, I am precluded from commenting on whether any particular Supreme Court decision was decided correctly under Canon 3(A)(6) of Code of Conduct for United States Judges. As prior judicial nominees have noted, however, 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 a judicial nominee, I am precluded from commenting on whether any particular Supreme Court decision was decided correctly under Canon 3(A)(6) of Code of Conduct for United States Judges. As prior judicial nominees have noted, however, 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: As a judicial nominee, I am precluded from commenting on whether any particular Supreme Court decision was decided correctly under Canon 3(A)(6) of Code of Conduct for United States Judges. If confirmed, I would apply *Griswold* faithfully.

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

Response: As a judicial nominee, I am precluded from commenting on whether any particular Supreme Court decision was decided correctly under Canon 3(A)(6) of Code of Conduct for United States Judges. I can state that the Supreme Court has overturned *Roe v. Wade* and that *Dobbs v. Jackson Women's Health Organization* is binding precedent. If confirmed, I would apply *Dobbs* faithfully.

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

Response: As a judicial nominee, I am precluded from commenting on whether any particular Supreme Court decision was decided correctly under Canon 3(A)(6) of Code of Conduct for United States Judges. I can state that the Supreme Court has overturned *Planned Parenthood v. Casey* and that *Dobbs v. Jackson Women's Health Organization* is binding precedent. If confirmed, I would apply *Dobbs* faithfully.

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

Response: As a judicial nominee, I am precluded from commenting on whether any particular Supreme Court decision was decided correctly under Canon 3(A)(6) of

Code of Conduct for United States Judges. If confirmed, I would apply *Gonzales v. Carhart* faithfully.

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

Response: As a judicial nominee, I am precluded from commenting on whether any particular Supreme Court decision was decided correctly under Canon 3(A)(6) of Code of Conduct for United States Judges. If confirmed, I would apply *Heller* faithfully.

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

Response: As a judicial nominee, I am precluded from commenting on whether any particular Supreme Court decision was decided correctly under Canon 3(A)(6) of Code of Conduct for United States Judges. If confirmed, I would apply *McDonald* faithfully.

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

Response: As a judicial nominee, I am precluded from commenting on whether any particular Supreme Court decision was decided correctly under Canon 3(A)(6) of Code of Conduct for United States Judges. If confirmed, I would apply *Hosanna-Tabor* faithfully.

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

Response: As a judicial nominee, I am precluded from commenting on whether any particular Supreme Court decision was decided correctly under Canon 3(A)(6) of Code of Conduct for United States Judges. If confirmed, I would apply *Bruen* faithfully.

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

Response: As a judicial nominee, I am precluded from commenting on whether any particular Supreme Court decision was decided correctly under Canon 3(A)(6) of Code of Conduct for United States Judges. If confirmed, I would apply *Dobbs* faithfully.

**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?**

Response: As a judicial nominee, I am precluded from commenting on whether any particular Supreme Court decision was decided correctly under Canon 3(A)(6) of

Code of Conduct for United States Judges. If confirmed, I would apply *Students for Fair Admissions* faithfully.

**m. Was *303 Creative LLC v. Elenis* correctly decided?**

Response: As a judicial nominee, I am precluded from commenting on whether any particular Supreme Court decision was decided correctly under Canon 3(A)(6) of Code of Conduct for United States Judges. If confirmed, I would apply *303 Creative* faithfully.

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

Response: The Supreme Court has 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*, 597 U.S. 1, 17 (2022) (citation omitted).

**30. 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, including Brian Fallon, Christopher Kang, Tamara Brummer, Jen Dansereau, and/or Becky Bond, 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?**

**b. Are you currently in contact with anyone associated with Demand Justice, including, but not limited to: Brian Fallon, Christopher Kang, Tamara Brummer, Jen Dansereau, and/or Becky Bond,? If so, who?**

**c. Have you ever been in contact with anyone associated with Demand Justice, including, but not limited to: Brian Fallon, Christopher Kang, Tamara Brummer, Jen Dansereau, and/or Becky Bond,? If so, who?**

Response to Question 30 and all subparts: No.

**31. 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, including, but not limited to, Rakim Brooks, Betsy Miller Kittredge, Nan Aron, Jake Faleschini, and/or**

**Zachery Morris, 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?**

b. **Are you currently in contact with anyone associated with the Alliance for Justice including, but not limited to: Rakim Brooks, Betsy Miller Kittredge, Nan Aron, Jake Faleschini, and/or Zachery Morris? If so, who?**
c. **Have you ever been in contact with anyone associated with Alliance for Justice, including, but not limited to: Rakim Brooks, Betsy Miller Kittredge, Nan Aron, Jake Faleschini, and/or Zachery Morris? If so, who?**

Response to Question 31 and all subparts: No.

32. **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?**
        i. **Please include in this answer anyone associated with Arabella's subsidiaries, including the Sixteen Thirty Fund, the New Venture Fund, the Hopewell Fund, the Windward Fund, the North Fund, or any other such Arabella dark-money fund.**
    b. **Are you currently in contact with anyone associated with Arabella Advisors, including, but not limited to: Eric Kessler, Himesh Bhise, Joseph Brooks, Isaiah Castilla, and/or Saurabh Gupta?**
        i. **Please include in this answer anyone associated with Arabella's subsidiaries, including the Sixteen Thirty Fund, the New Venture Fund, the Hopewell Fund, the Windward Fund, the North Fund, or any other such Arabella dark-money fund that is still shrouded.**
    c. **Have you ever been in contact with anyone associated with Arabella Advisors, including, but not limited to: Eric Kessler, Himesh Bhise, Joseph Brooks, Isaiah Castilla, and/or Saurabh Gupta?**
        i. **Please include in this answer anyone associated with Arabella's subsidiaries, such as the Sixteen Thirty Fund, the New Venture Fund, the Hopewell Fund, the Windward Fund, the North Fund, or any other such Arabella dark-money fund that is still shrouded.**

Response to Question 32 and all subparts: No.

33. **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?**
b. **Are you currently in contact with anyone associated with the Open Society Foundations, including but not limited to: George Soros, Alexander Soros, Mark Malloch-Brown, and/or Binaifer Nowrojee?**
c. **Have you ever been in contact with anyone associated with the Open Society Foundations including but not limited to: George Soros, Alexander Soros, Mark Malloch-Brown, and/or Binaifer Nowrojee?**
d. **Have you ever received any funding, or participated in any fellowship or similar program affiliated with the Open Society network?**

Response to Question 33 and all subparts: No.

**34. 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?**
b. **Are you currently in contact with anyone associated with Fix the Court, including, but not limited to: Gabe Roth, and/or Josh Cohen? If so, who?**
c. **Have you ever been in contact with anyone associated with Fix the Court including, but not limited to: Gabe Roth, and/or Josh Cohen? If so, who?**

Response to Question 34 and all subparts: No.

**35. The Raben Group is a lobbying group that "champions diversity, equity, and justice as core values that ignite our mission for impactful change in corporate, nonprofit, government and foundation work." The group prioritizes judicial nominations and its list of clients have included the Open Society Foundations, the American Civil Liberties Union, the New Venture Fund, the Sixteen Thirty Fund, and the Hopewell Fund. It staffs the Committee for a Fair Judiciary.**
a. **Has anyone associated with The Raben Group 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?**
b. **Are you currently in contact with anyone associated with The Raben Group, including but not limited to: Robert Raben, Donald Walker, Patty First, Joe Onek, Gara LaMarche, Steve Sereno, Dylan Tureff and/or Katherine Huffman? If so, who?**
c. **Have you ever been in contact with anyone associated with The Raben Group including but not limited to: Robert Raben, Donald Walker, Patty First, Joe Onek, Gara LaMarche, Steve Sereno, Dylan Tureff, and/or Katherine Huffman? If so, who?**

**d. Has anyone associated with the Raben Group offered to assist you with your nomination, including but not limited to organizing letters of support?**

Response to Question 35 and all subparts: No.

**36. The Committee for a Fair Judiciary "fights to confirm diverse and progressive federal judges to counter illegitimate right-wing dominated courts" and is staffed by founder Robert Raben.**

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

**b. Are you currently in contact with anyone associated with the Committee for a Fair Judiciary, including, but not limited to: Jeremy Paris, Erika West, Elliot Williams, Nancy Zirkin, and/or Joe Onek? If so, who?**
**Have you ever been in contact with anyone associated with the Committee for a Fair Judiciary, including, but not limited to: Jeremy Paris, Erika West, Elliot Williams, Nancy Zirkin, and/or Joe Onek? If so, who?**

Response to Question 36 and all subparts: No.

**37. The American Constitution Society is "the nation's foremost progressive legal organization" that seeks to "support and advocate for laws and legal systems that redress the founding failures of our Constitution, strengthen our democratic legitimacy, uphold the role of law, and realize the promise of equality for all, including people of color, women, LGBTQ+ people, people with disabilities, and other historically excluded communities."**

**a. Has anyone associated with the American Constitution Society, 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?**

**b. Are you currently in contact with anyone associated with the American Constitution Society including, but not limited to Russ Feingold? If so, who?**

**c. Have you ever been in contact with anyone associated with the American Constitution Society including, but not limited to Russ Feingold? If so, who?**

Response to Question 37 and all subparts: No.

**38. 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 August 2023, 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 September 10, 2023, I submitted my application to the Senators' 11-member Screening Committee. On October 8, 2023, I

interviewed with the Screening Committee. On November 8, 2023, I interviewed with Senator Duckworth. On November 10, 2023, I interviewed with Senator Durbin. On November 17, 2023, my name was on a list of six candidates that Senators Durbin and Duckworth submitted to the White House. On November 21, 2023, I interviewed with attorneys from the White House Counsel's Office. Since December 8, 2023, I have been in contact with officials at the Office of Legal Policy at the Department of Justice and the White House. On February 21, 2024, the President announced his intent to nominate me.

**39. 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: I did not talk with anyone associated with the organization Demand Justice during my selection process, and I am unaware of anyone doing so on my behalf

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

Response: I did not talk with anyone associated with Alliance for Justice during my selection process, and I am unaware of anyone doing so on my behalf.

**41. 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, the Hopewell Fund, the Windward Fund, the North Fund, or any other such Arabella dark-money fund that is still shrouded.**

Response: I did not talk with anyone associated with Arabella Advisors, or its known subsidiaries, during my selection process, and I am unaware of anyone doing so on my behalf.

**42. During or leading up to 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: I did not talk with anyone associated with the Open Society Foundation during my selection process, and I am unaware of anyone doing so on my behalf.

**43. During or leading up to 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: I did not talk with anyone associated with the Open Society Foundation during my selection process, and I am unaware of anyone doing so on my behalf.

**44. During or leading up to your selection process, did you talk with any officials from or anyone directly associated with The Raben Group or the Committee for a Fair Judiciary, or did anyone do so on your behalf? If so, what was the nature of those discussions?**

Response: I did not talk with anyone associated with The Raben Group or the Committee for a Fair Judiciary during my selection process, and I am unaware of anyone doing so on my behalf.

**45. 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: I did not talk with anyone associated with the American Constitution Society during my selection process, and I am unaware of anyone doing so on my behalf.

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

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

Response to Question 46 and all subparts: No.

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

Response: On November 21, 2023, I interviewed with attorneys from the White House Counsel's Office. Since December 8, 2023, I have been in contact with officials at the Office of Legal Policy at the Department of Justice and the White House. On February 21, 2024, the President announced his intent to nominate me.

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

Response: I received written questions for the record on March 27, 2024. I reviewed each question and prepared my responses, reviewing my personal records and conducting legal research as necessary. I submitted a draft of my answers to attorneys with the Office of

Legal Policy at the Department of Justice, who provided limited feedback for my consideration. I then finalized and submitted my answers.

**Senator Mazie K. Hirono**
**Senate Judiciary Committee**

**Nominations Hearing | March 20, 2024**
**Questions for the Record for Georgia N. Alexakis**

***Sexual Harassment***
**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:**

QUESTIONS:

1. **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.

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

   Response: No.

**Senator Jon Ossoff**
**Questions for the Record for Georgia N. Alexakis**
**March 20, 2024**

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

   Response: Yes.

2. **How will you approach First Amendment cases?**

   Response: If confirmed as a United States District Judge, I would approach First Amendment cases the same way I would approach all cases that would come before me. I would research and review the binding precedent of the Supreme Court and the Seventh Circuit relating to the First Amendment in a thorough manner, and I would apply that precedent faithfully and impartially to the facts and issues before me.

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

      Response: These First Amendment protections foster a society where people can express themselves freely, engage in the democratic process, and serve as a check on government power without fear of reprisal.

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: Our nation's legal system is premised on an adversarial system the integrity of which depends on every defendant having effective counsel. As a federal prosecutor, I have seen firsthand the significant difference competent counsel can make in the trajectory and outcome of a case. Their presence safeguards defendants' constitutional rights, serves as an important check on the government's power, and promotes the public's confidence in the proceeding by ensuring that both parties have had the benefit of zealous representation.

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: Individuals with limited English proficiency face numerous challenges navigating our nation's legal system. Such challenges include an inability to communicate with attorneys, court personnel, and opposing parties; to understand the unfolding proceedings, including criminal charges brought against them; and to appreciate in full the decisions they are called upon to make, including decisions to plead guilty, waive a jury trial, or settle a claim.

**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 play a critical role in ensuring due process and access to justice in all cases, including in cases where a party has limited English proficiency. Litigants must be able to understand legal proceedings and participate in those proceedings in a meaningful manner before they, and the public, can have confidence that a case was fairly and impartially decided. In my nearly twenty years of practice as an attorney, I have seen judges take a number of steps to ensure that this level of understanding and participation is in place. Such steps have included arranging for interpreters, providing access to translated documents, appointing counsel who can pursue these and other accommodations, and taking care in the courtroom to move more deliberately through proceedings and to use language more readily understood by a layperson. If I were so fortunate to be confirmed, I would take similar measures to ensure due process and access to justice for all litigants, including those with limited English proficiency.

**Senator Mike Lee**
**Questions for the Record**
**Georgia Nick Alexakis, Nominee for District Court Judge for the Northern District of Illinois**

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

Response: If confirmed, I would adopt a judicial philosophy based on humility, fidelity, and respect. In terms of humility: Federal courts are courts of limited jurisdiction, and a district court's role is to decide only the issues before it, based only on the facts before it, while applying binding precedent and statutes enacted by legislative bodies. In terms of fidelity: I would faithfully apply Supreme Court and Seventh Circuit precedent, setting aside any personal beliefs I may have. In terms of respect: I would treat all litigants with dignity and care.

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

Response: I would faithfully apply Supreme Court and Seventh Circuit precedent interpreting the statutory provision at issue. If there were no such precedent, I would begin with the text of the statute, and where the meaning of the statute was plain, my work would end there. If the text were 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, accepted canons of statutory construction, and cases from other jurisdictions as sources of persuasive authority. If these additional resources do not provide sufficient guidance, I would look to legislative history to the extent such analysis is permitted under applicable precedent from the Supreme Court and Seventh Circuit. *See, e.g.*, *Bostock*, *v. Clayton Cty., Georgia*, 590 U.S. 644, 674-75 (2020) ("To ferret out . . . shifts in linguistic usage or subtle distinctions between literal and ordinary meaning, this Court has sometimes consulted the understandings of the law's drafters as some (not always conclusive) evidence.").

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

Response: I would faithfully apply Supreme Court and Seventh Circuit precedent interpreting the constitutional provision at issue. If there were no such precedent, I would begin with the text of the constitutional provision, interpreting it in a manner consistent with the method of interpretation that the Supreme Court has used. For example, in *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court looked to the original public meaning of the Second Amendment.

**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. Supreme Court precedent instructs lower courts to look to "historical practices and understandings" when interpreting certain provisions of the Constitution, including examining the Constitution's "[n]ormal meaning, " as it would have "been known to ordinary citizens in the founding generation." *See*, *e.g.*, *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 535-36 (2022) (directing courts to conduct "[a]n analysis focused on original meaning and history" for purposes of the Establishment Clause"); *District of Columbia v. Heller*, 554 U.S. 570, 576 (2008) ("[T]he Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary . . . meaning."); *id.* at 581-86 (consulting founding-era sources to interpret the words "arms," "keep," and "bear" for purposes of the Second Amendment).

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

Response: Please see my response to Question 2.

**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 "plain meaning" of a statute or constitutional provision refers to the public understanding of the relevant language at the time of enactment. *See Bostock v. Clayton Cty., Georgia*, 590 U.S. 644, 654 (2020); *District of Columbia v. Heller*, 554 U.S. 570, 576 (2008).

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

Response: Article III standing requires that a plaintiff show (1) an injury in fact; (2) traceable to the conduct of the defendant; and (3) that is likely to be redressed by a favorable ruling of the court. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).

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

Response: In *McCullough v. Maryland*, the Supreme Court held that under the Necessary and Proper Clause of Article I, Section 8, Congress has implied powers beyond those enumerated in the Constitution, for instance, the implied power to establish a national bank. 17 U.S. 316, 421 (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: If confirmed, I would consult binding precedent from the Supreme Court and the Seventh Circuit to determine whether Congress has appropriately exercised its power to enact a law. I note that the Supreme Court has held that "[t]he question of the constitutionality of action taken by Congress does not depend on recitals of power which it undertakes to exercise." *Nat'l Fed. Of Ind. Bus. v. Sebelius*, 567 U.S. 519, 570 (2012).

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

Response: In *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997), the Supreme Court held that the Constitution protects some unenumerated rights that are "deeply rooted in this country's history and tradition" and "implicit in the concept of ordered liberty" "such that neither liberty nor justice would exist if they were sacrificed." *See also Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 231 (2022). Examples of such unenumerated 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, *Griswold v. Connecticut*, 381 U.S. 479 (1965).

**11. What rights are protected under substantive due process?**

Response: Please see my response to Question 10.

**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: If confirmed, any personal beliefs I may have about substantive due process would play no role in my analysis of any case that came before me. I would faithfully apply Supreme Court and Seventh Circuit precedent. Under that precedent, the Supreme Court has explained that "[t]he doctrine that prevailed in *Lochner* . . . and like cases—that due process authorizes courts to hold laws unconstitutional when they believe the legislature has acted unwisely—has long since been discarded." *See Ferguson v. Skrupa*, 372 U.S. 726, 730 (1963).

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

Response: Under the Commerce Clause, Congress may regulate: (1) channels of interstate commerce; (2) instrumentalities of interstate commerce; and (3) activities that have a substantial effect on interstate commerce. *See United States v. Lopez*, 514 U.S. 549, 558–59 (1995); *Gonzales v. Raich*, 545 U.S. 1, 16-17 (2005).

**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 recognized race, religion, national origin, and alienage as suspect classifications. *See, e.g.*, *Graham v. Richardson*, 403 U.S. 365, 371-72 (1971). The Court has described the qualities of suspect classes in varying ways, but generally has identified them as involving classifications "so seldom relevant to the achievement of any legitimate state interest that laws grounded in such considerations are deemed to reflect prejudice and antipathy—a view that those in the burdened class are not as worthy or deserving as others." *See City of Cleburne, Texas v. Cleburne Living Center*, 473 U.S. 432, 440 (1985); *Mass. Bd. of Retirement v. Murgia*, 427 U.S. 307, 313 (1976) (defining a suspect class as one "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") (citing *San Antonio School Dist. v. Rodriguez*, 411 U.S. 16, 28 (1973)).

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

Response: Articles I, II, and III grant separate powers to the legislative, executive, and judicial branches to make, enforce, and interpret the law, respectively. Checks and balances and the separation of powers are the hallmark of our Constitution's structure. They prevent concentration of power in any one branch of the government and ensure that each branch stays faithful to its own powers and responsibilities. *See, e.g.*, *Morrison v. Olson*, 487 U.S. 654, 693 (1988).

**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: I would faithfully apply Supreme Court and Seventh Circuit precedent to determine whether one branch has exercised authority not granted to it by the Constitution. Such precedent includes *Marbury v. Madison*, 5 U.S. 137 (1803), in which the Supreme Court established the authority for the judiciary to review the constitutionality of executive and legislative acts, but also explained that Congress could not expand federal courts' original jurisdiction beyond those situations enumerated in the Constitution. Another relevant precedent is *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952). In *Youngstown*, the Supreme Court held that the President did not act within his constitutional power when he directed the Secretary of Commerce to take possession of, and operate, most of the nation's steel mills; the authority to direct such a seizure had neither been afforded to the President by Congress nor did it reside in any constitutional provision granting the President executive powers.

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

Response: A judge should treat all parties with respect and dignity. However, a judge's consideration of a case should only be guided by the facts and the applicable law of the case, not based on personal views or feelings.

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

Response: Both outcomes are improper, and judges should do all they can to avoid either one.

**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 examined this issue, so I do not have sufficient information to be able to provide a view on the described change. If confirmed, I would faithfully apply Supreme Court and Seventh Circuit precedent without regard to such trends and, in so doing, would aim to avoid both aggressive judicial review and judicial passivity.

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

Response: Black's Law Dictionary defines judicial review as "[a] court's power to review the actions of other branches or levels of government; esp., the courts' power to invalidate legislative and executive actions as being unconstitutional." Black's Law Dictionary (11th ed. 2019). *See also Marbury v. Madison*, 5 U.S. 137 (1803). Black's Law Dictionary defines judicial supremacy as "[t]he doctrine that interpretations of the Constitution by the federal judiciary in the exercise of judicial review, esp. U.S. Supreme Court interpretations, are binding on the coordinate branches of the federal government and the states." Black's Law Dictionary (11th ed. 2019). *See also Cooper v. Aaron*, 358 U.S. 1, 18 (1958).

**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: Under Article VI of the Constitution, legislators as well as executive and judicial officers are bound to support the Constitution. See U.S. Const., art. VI. Each

are also required to follow the Supreme Court's interpretation of the Constitution. *See Cooper v. Aaron*, 358 U.S. 1 (1958). Under Article V of the Constitution, constitutional amendments have been passed to reject decisions of the Supreme Court. For example, the Eleventh Amendment was enacted in response to *Chisolm v. Georgia*, 2 U.S. 419 (1793).

**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: The judiciary's role is limited to applying and interpreting the law in connection with the particular case or controversy presented. Its role is not to make the law; that role belongs to legislatures. And its role is not to enforce the law; that role belongs to the executive branch.

**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: District courts must faithfully apply the binding precedent of the Supreme Court and, in my case, the Seventh Circuit. District courts should neither extend precedent where it does not apply nor limit the application of precedent when it otherwise would apply. District courts also cannot overturn precedent. If confirmed as a district court judge, I would act accordingly.

**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.

**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 this statement, and I am unaware of any federal statute or precedent from the Supreme Court or Seventh Circuit that defines equity in the manner described above. Black's Law Dictionary (11th ed. 2019) defines "equity" as "[f]airness; impartiality; evenhanded dealing."

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

Response: According to Merriam-Webster, one definition of "equity" is "justice according to natural law or right; specifically: freedom from bias or favoritism" and one definition of "equality" is "the quality or state of being equal."

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

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 unaware of any federal statute or Supreme Court or Seventh Circuit precedent applying the Equal Protection Clause to the definition of equity cited in my responses to Questions 25 and 26.

**28. Without citing Black's Law Dictionary, how do you define "systemic racism?"**

Response: I am not aware of a consensus definition of "systemic racism," nor do I have a personal definition of that term. Merriam-Webster defines "systemic racism" as "the oppression of a racial group to the advantage of another as perpetuated by inequity within interconnected systems (such as political, economic, and social systems)."

**29. Without citing Black's Law Dictionary, how do you define "Critical Race Theory?"**

Response: I am not aware of a consensus definition of "Critical Race Theory," nor do I have a personal definition of that term. Merriam-Webster defines "Critical Race Theory" as "a group of concepts (such as the idea that race is a sociological rather than biological designation and that racism pervades society and is fostered and perpetuated by the legal system) used for examining the relationship between race and the laws and legal institutions of a country and especially the United States."

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

**Questions for the Record for Georgia Nick Alexakis, nominated to be United States District Judge for the Northern District of Illinois**

## I. Directions

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

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

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

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

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

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

## II. Questions

**1. Is racial discrimination wrong?**

Response: Congress has enacted statutes prohibiting racial discrimination. This includes, for instance, Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a)(1) and the Fair Housing Act of 1968, 42 U.S.C. § 3605(a). The Supreme Court has also recognized race as a suspect classification such that it is subject to strict scrutiny review.

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

Response: In *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997), the Supreme Court held that the Constitution protects some unenumerated rights that are "deeply rooted in this country's history and tradition" and "implicit in the concept of ordered liberty" "such that neither liberty nor justice would exist if they were sacrificed." *See also Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 231 (2022). Examples of such unenumerated 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, *Griswold v. Connecticut*, 381 U.S. 479 (1965). If confirmed and confronted with a claim that an unenumerated right not recognized by the Supreme Court exists, I would apply the *Glucksberg* framework and any other binding Supreme Court and Seventh Circuit precedent.

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

Response: I have not studied the judicial philosophies of U.S. Supreme Court justices. If confirmed, I would adopt a judicial philosophy based on humility, fidelity, and respect. In terms of humility: Federal courts are courts of limited jurisdiction, and a district court's role is to decide only the issues before it, based only on the facts before it, while applying binding precedent and statutes enacted by legislative bodies. In terms of fidelity: I would faithfully apply Supreme Court and Seventh Circuit precedent, setting aside any personal beliefs I may have. In terms of respect: I would treat all litigants with dignity and care.

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

Response: Black's Law Dictionary defines the term "originalism," as "[t]he doctrine that words of a legal instrument are to be given the meanings they had when they were adopted; specif. the canon that a legal test 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." Black's Law Dictionary (11th ed. 2019). The

original public meaning of a provision plays a critical role when interpreting the Constitution. The Supreme Court has set forth the importance of this approach when interpreting multiple constitutional provisions, and I would faithfully apply that methodology when Supreme Court precedent requires it. This includes, for instance, the Supreme Court's interpretative methodology in the context of the First and Second Amendments. *See*, *e.g.*, *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 535-36 (2022) (directing courts to conduct "[a]n analysis focused on original meaning and history" for purposes of the Establishment Clause); *District of Columbia v. Heller*, 554 U.S. 570, 576 (2008) ("[T]he Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary . . . meaning."); *id.* at 581-86 (consulting founding-era sources to interpret the words "arms," "keep," and "bear" for purposes of the Second Amendment).

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

Response: Black's Law Dictionary defines "living constitutionalism" as "[t]he doctrine that the Constitution should be interpreted and applied in accordance with changing circumstances and, in particular, with changes in social values." Black's Law Dictionary (11th ed. 2019). The Supreme Court has described the Constitution as having a "meaning [that] is fixed according to the understandings of those who ratified it." *See New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 28 (2022) ("Although its meaning is fixed according to the understandings of those who ratified it, the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated."). If confirmed, I would faithfully apply Supreme Court precedent and Seventh Circuit precedent on matters of constitutional interpretation.

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

Response: Yes. 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 certain provisions of the Constitution, including examining the Constitution's "[n]ormal meaning, " as it would have "been known to ordinary citizens in the founding generation." *See*, *e.g.*, *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 535-36 (2022) (directing courts to conduct "[a]n analysis focused on original meaning and history" for purposes of the Establishment Clause"); *District of Columbia v. Heller*, 554 U.S. 570, 576 (2008) ("[T]he Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary . . . meaning."); *id.* at 581-86 (consulting founding-era sources to interpret the words "arms," "keep," and "bear" for purposes of the Second Amendment).

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

Response: No. The "plain meaning" of a statute or constitutional provision refers to the public understanding of the relevant language at the time of enactment. *See Bostock v. Clayton Cty., Georgia*, 590 U.S. 644, 654 (2020); *District of Columbia v. Heller*, 554 U.S. 570, 576 (2008).

**8. Do you believe the meaning of the Constitution changes over time absent changes through the Article V amendment process?**

Response: The meaning of the Constitution is "fixed according to the understandings of those who ratified it," although "the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated." *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 28 (2022). *See also United States v. Jones*, 565 U.S. 400, 404-05 (2012) (holding that installation of a tracking device was "a physical intrusion [that] would have been considered a 'search' within the meaning of the Fourth Amendment when it was adopted").

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

Response: Yes.

**a. Was it correctly decided?**

Response: As a judicial nominee, I am precluded from commenting on the quality of the reasoning of any particular Supreme Court decision under Canon 3(A)(6) of Code of Conduct for United States Judges. If confirmed, I would faithfully follow binding Supreme Court and Seventh Circuit precedent.

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

Response: Yes.

**a. Was it correctly decided?**

Response: As a judicial nominee, I am precluded from commenting on the quality of the reasoning of any particular Supreme Court decision under Canon 3(A)(6) of Code of Conduct for United States Judges. If confirmed, I would faithfully follow binding Supreme Court and Seventh Circuit precedent.

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

Response: Yes.

**a. Was it correctly decided?**

Response: As a judicial nominee, I am precluded from commenting on the quality of the reasoning of any particular Supreme Court decision under Canon 3(A)(6) of Code of Conduct for United States Judges. As prior judicial nominees have noted, however, 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.

**12. Is the Supreme Court's ruling in *Students for Fair Admissions v. Harvard* settled law?**

Response: Yes.

**a. Was it correctly decided?**

Response: As a judicial nominee, I am precluded from commenting on the quality of the reasoning of any particular Supreme Court decision under Canon 3(A)(6) of Code of Conduct for United States Judges. If confirmed, I would faithfully follow binding Supreme Court and Seventh Circuit precedent.

**13. Is the Supreme Court's ruling in *Gibbons v. Ogden* settled law?**

Response: Yes.

**a. Was it correctly decided?**

Response: As a judicial nominee, I am precluded from commenting on the quality of the reasoning of any particular Supreme Court decision under Canon 3(A)(6) of Code of Conduct for United States Judges. If confirmed, I would faithfully follow binding Supreme Court and Seventh Circuit precedent.

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

Response: 18 U.S.C. § 3142(e) establishes a rebuttable presumption in favor of pretrial detention for certain offenses such that no release condition, or combination of release conditions, will reasonably assure the defendant's appearance in court and the safety of the community. These offenses include a narcotics offense for which the maximum sentence is 10 years or more, an offense under 18 U.S.C. §§ 924(c) and 956(a), certain offenses involving acts of terrorism, offenses involving slavery or human trafficking, and certain offenses involving minors. 18 U.S.C. § 3142(e)(3)(A)-(E).

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

Response: Although Congress did not set out its policy rationale in 18 U.S.C. § 3142(e), in general, the presumption in favor of pretrial detention for the above-listed offenses appears to reflect a legislative determination that defendants accused of certain crimes present a greater flight risk or danger to the community.

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

Response: Yes. Any governmental burden on the free exercise of religion must be neutral and generally applicable; otherwise, strict scrutiny applies. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993). A plaintiff challenging state governmental action as placing a substantial burden on the free exercise of religion must initially demonstrate that such action has burdened a sincere religious practice pursuant to a policy that is neither "neutral" nor "generally applicable," *see Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 525 (2022), including by prohibiting particular religious activity while simultaneously permitting or treating more favorably comparable secular activity, *see Tandon v. Newsom*, 593 U.S. 61, 62 (2021). In addition, facially neutral state action is not actually neutral if it encompasses hostility concerning or targets a religion. *See Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n*, 584 U.S. 617, 634-35 (2018). If a law or policy allows the government to make individualized, discretionary exemptions, it is likely not neutral or generally applicable, and would fail strict scrutiny. *See Fulton v. City of Philadelphia*, 593 U.S. 522, 533 (2021). Once a plaintiff's initial burden is met, the government action is subject to strict scrutiny review to determine whether the government action "was justified by a compelling state interest and was narrowly tailored in pursuit of that interest." *Kennedy*, 597 U.S. at 525. In the context of the Religious Freedom Restoration Act of 1993, the Supreme Court also has held that forcing one to choose between "sincere religious beliefs" and "economic consequences [that] will be severe" imposes a substantial burden on the exercise of religion. *See Burwell v. Hobby Lobby*, 573 U.S. 682, 720-23 (2014).

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

Response: Any governmental burden on the free exercise of religion must be neutral and generally applicable; otherwise, strict scrutiny applies. *See Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 533 (1993). Under this analysis, the government action is subject to strict scrutiny review to determine whether the government action "was justified by a compelling state interest and was narrowly tailored in pursuit of that interest." *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 525 (2022).

**17. In *Roman Catholic Diocese of Brooklyn v. Cuomo*, the Roman Catholic Diocese of Brooklyn and two Orthodox Jewish synagogues sued to block enforcement of an**

**executive order restricting capacity at worship services within certain zones, while certain secular businesses were permitted to remain open and subjected to different restrictions in those same zones. The religious organizations claimed that this order violated their First Amendment right to free exercise of religion. Explain the U.S. Supreme Court's holding on whether the religious entity-applicants were entitled to a preliminary injunction.**

Response: In *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 15-16 (2020), the Supreme Court enjoined the enforcement of an executive order issued by the governor of New York "that impose[d] very severe restrictions on attendance at religious services." The Court concluded that the religious entities were likely to prevail on their First Amendment claims because the order "single[d] out houses of worship for especially harsh treatment," relative to secular businesses, and thus failed to satisfy strict scrutiny. *Id.* at 17-18 (recognizing that "[s]temming the spread of COVID-19 is unquestionably a compelling interest," but adding that "it is hard to see how the challenged regulations can be regarded as 'narrowly tailored'"). The Court concluded that the "loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury," and it had "not been shown that granting the applications [would] harm the public." *Id*. at 19-20.

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

Response: In *Tandon v. Newsom*, 593 U.S. 61 (2021), the Supreme Court held that the Ninth Circuit erred in denying the plaintiff an injunction against state restrictions on at-home religious gatherings imposed during the COVID-19 pandemic. The Court concluded that the state's restrictions were not neutral and generally applicable, where the government treated any comparable secular activity more favorably than religious activity. *Id*. at 62. The Court further explained that "whether two activities are comparable for purposes of the Free Exercise Clause must be judged against the asserted government interest that justifies the regulation at issue," adding that "[c]omparability is concerned with the risks various activities pose, not the reasons why people gather." *Id.* Finally, the Court determined that the government had the burden of establishing that less restrictive measures could not address its interest in reducing the spread of COVID-19. *Id.* at 64 (writing that the Ninth Circuit erred when it did not "requir[e] the State to explain why it could not safely permit at-home worshipers to gather in larger numbers while using precautions used in secular activities").

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

Response: Yes. *See, e.g.*, *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507 (2022).

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

Response: In *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 584 U.S. 617, 621-25 (2018), the Supreme Court held that the Colorado Civil Rights Commission violated the Free Exercise Clause, when it concluded that petitioner, an expert baker and devout Christian, had violated the state's anti-discrimination act when he told a same-sex couple that he would not create a cake for their wedding celebration because of his religious opposition to same-sex marriages. The Court determined that the petitioner was entitled to a neutral and respectful consideration of his claims, but that consideration was compromised by the Commission's "clear and impermissible hostility toward the sincere religious beliefs motivating [the petitioner's] objection." *Id.* at 634.

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

Response: In *Burwell v. Hobby Lobby*, 573 U.S. 682, 725 (2014), the Supreme Court explained that "it is not for [courts] to say that [an individual's] religious beliefs are mistaken or insubstantial." Instead, the question is whether the belief reflects "an honest conviction." *Id.* Similarly, in *Korte v. Sebelius*, 735 F.3d 654, 683 (7th Cir. 2013), the Seventh Circuit explained, in the context of the Religious Freedom Restoration Act, that "the substantial-burden inquiry does *not* invite the court to determine the centrality of the religious practice to the adherent's faith." (Emphasis in original.) It added: "And free-exercise doctrine makes it clear that the test for substantial burden does not ask whether the claimant has correctly interpreted his religious obligations . . . Indeed, that inquiry is prohibited." *Id.* (internal citations omitted). "The religious objection must be both sincere and religious in nature," but "it is not within the judicial function and judicial competence to inquire whether [the adherent has] . . . correctly perceived the commands of [his] . . . faith." *Id.* (quoting *Thomas v. Review Bd. of the Ind. Em't Sec. Div.,* 450 U.S. 707, 716 (1981)) (alterations and omissions in original).

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

Response: Please see my response to Question 21. If I were faced with a case where a litigant's sincerely held religious beliefs were challenged, I would faithfully apply all Supreme Court and Seventh Circuit precedent.

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

Response: Please see my response to Question 21. If I were faced with a case where a litigant's sincerely held religious beliefs were challenged, I would faithfully apply all Supreme Court and Seventh Circuit precedent.

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

Response: As a judicial nominee, it would be inappropriate for me to articulate the "official position" of a religious organization. If confirmed, my role would be limited to assessing whether any individual's religious beliefs are sincerely held, as explained in my response to Question 21.

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

Response: In *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049, 2055 (2020), the Supreme Court explained that the "First Amendment protects the right of religious institutions to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." The Court found that the employment discrimination claims advanced by two teachers employed by religious schools fell within the "ministerial exception" because the teachers' religious teaching responsibilities "lie at the very core of the mission of a private religious school." *Id.* at 2055. The fact that the teachers were not given the title of "minister" was of no moment. *Id.*

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

Response: In *Fulton v. City of Philadelphia*, 593 U.S. 522 (2021), the Supreme Court held that Philadelphia's refusal to contract with a state-licensed social service agency affiliated with the Roman Catholic Archdiocese unless the agency agreed to certify same-sex couples as foster parents violated the Free Exercise Clause of the First Amendment. The city's non-discrimination policy burdened the agency's religious exercise by forcing it either to curtail its mission or to certify same-sex couples as foster parents in violation of its religious beliefs. *Id.* at 532. And the non-discrimination policy was neither neutral nor generally applicable because the Commissioner was permitted to make exceptions at his "sole discretion." *Id.* at 534-38. As a result, the law was subject to, and failed, strict scrutiny. *Id.* at 540-42.

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

Response: Maine's tuition assistance program violated the Free Exercise Clause of the First Amendment because the law was not neutral and generally applicable by virtue of funding only non-religious schools. *Carson v. Makin*, 596 U.S. 767 (2022). Applying

strict scrutiny, the Supreme Court concluded that the state did not have a compelling interest in prohibiting the use of tuition payments at religious schools because "a neutral benefit program in which public funds flow to religious organizations through the independent choices of private benefit recipients does not offend the Establishment Clause." *Id.* at 781.

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

Response: In *Kennedy v. Bremerton School District*, 597 U.S. 507, 512 (2022), the Supreme Court held that the dismissal of a football coach for engaging in personal prayer midfield after games violated the Free Exercise and Free Speech Clauses of the First Amendment. The coach's prayer on the football field did not occur while he was acting within the scope of duties as a coach. *Id.* at 525-26, 530. The school district's policy prohibiting his conduct was neither neutral nor generally applicable and therefore was subject to strict scrutiny. *Id.* at 526-27. The school district could not show that prohibiting the prayer served a compelling purpose, namely, avoiding a violation of the Establishment Clause. *Id.* at 532-38.

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

Response: *Mast v. Fillmore County*, 141 S. Ct. 2430 (2021), involved an Amish community's request for a county ordinance exemption based on their religious beliefs under the Religious Land Use and Institutionalized Persons Act. Justice Gorsuch issued a concurring opinion reaffirming the Supreme Court's holding in *Fulton v. City of Philadelphia*, 593 U.S. 522 (2021). Justice Gorsuch wrote that the county "erred by treating [its] general interest in sanitation regulations as 'compelling' without reference to the *specific* application of those rules to *this* community." *Mast*, 141 S. Ct. at 2432 (Gorsuch, J., concurring) (emphases in original); *see also id.* at 2434 ("In this country, neither the Amish nor anyone else should have to choose between their farms and their faith.").

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

Response: As a judicial nominee, the Code of Conduct for United States Judges prohibits me from making public comments on the merits of a matter pending or impending in any court (Canon 3(A)(6)) and from acting in a manner that compromises public confidence in the integrity and impartiality of the judiciary (Canon 2(A)). If confirmed and such an issue came before me, I would faithfully apply Supreme Court and Seventh Circuit precedent. I am aware that in *Cox v. Louisiana*, the Supreme Court reviewed a state

statute "modeled after a bill pertaining to the federal judiciary." 379 U.S. 559, 561 (1965) (citing § 1507). In so doing, the Court stated: "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." *Id.* at 563.

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

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

Response: No.

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

Response: No.

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

Response: No.

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

Response: No.

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

Response: Yes.

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

Response: Yes.

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

Response: Under the Appointments Clause of the Constitution, the President has the authority to make political appointments with the advice and consent of the Senate. As a judicial nominee, I am prohibited from offering an opinion that could cause one to believe that I have prejudged an issue that could come before me (Canon 3(A)(6)). If confirmed, I would faithfully apply Supreme Court and Seventh Circuit precedent.

**32. If a program or policy has a racially disparate outcome, is this evidence of either purposeful or subconscious racial discrimination?**

Response: Disparate impact claims are cognizable under certain federal antidiscrimination laws. *See, e.g.*, *Texas Dep't of Hous. & Cmty. Affs. V. Inclusive Cmtys. Project, Inc.*, 576 U.S. 519, 539 (2015). I am not aware of Supreme Court or Seventh Circuit present addressing subconscious racial discrimination. If confirmed, I would faithfully apply any Supreme Court and Seventh Circuit precedent to any such issue that is properly raised in a case before me.

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

Response: The appropriate size of the Supreme Court is a question for Congress and policymakers.

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

Response: No.

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

Response: The Second Amendment protects an individual's right to keep and bear arms, both in one's home and in public. *See District of Columbia v. Heller*, 554 U.S. 570 (2008); *McDonald v. City of Chicago*, 561 U.S. 742 (2010); *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022).

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

Response: The Supreme Court has 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*, 597 U.S. 1, 17 (2022) (citation omitted).

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

Response: Yes. *See District of Columbia v. Heller*, 554 U.S. 570 (2008)

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

Response: I am not aware of any Supreme Court precedent holding that the right to own a firearm receives less protection that any other rights specifically enumerated in the Constitution. The Supreme Court has explained that the constitutional right to keep and bear arms "in public for self-defense is not a 'second-class right.'" *New York State Rifle and Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 70 (2022) (quoting *McDonald v. City of Chicago*, 561 U.S. 742, 780 (2010)).

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

Response: I am not aware of any Supreme Court precedent holding that the right to own a firearm receives less protection that any other rights specifically enumerated in the Constitution. The Supreme Court has explained that the constitutional right to keep and bear arms "in public for self-defense is not a 'second-class right.'" *New York State Rifle and Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 70 (2022) (quoting *McDonald v. City of Chicago*, 561 U.S. 742, 780 (2010)).

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

Response: Article II of the Constitution provides that the President "shall take Care that the Laws be faithfully executed." U.S. Const. art. II, § 3. The executive's discretion to execute the laws is "broad" but not "unfettered." *Wayte v. United States*, 470 U.S. 598, 608 (1985); *see also United States v. Texas*, 599 U.S. 670, 679-680 (2023) (recognizing that "the Executive Branch must prioritize its enforcement efforts . . . because the Executive Branch (i) invariably lacks the resources to arrest and prosecute every violator of every law and (ii) must constantly react and adjust to the ever-shifting public-safety and public-welfare needs of the American people"). As a judicial nominee, the Code of Conduct for United States Judges prohibits me from making public comments on the merits of a matter pending or impending in any court (Canon 3(A)(6)) and from acting in a manner that compromises public confidence in the integrity and impartiality of the judiciary (Canon 2(A)). If confirmed, I would faithfully apply Supreme Court and Seventh Circuit precedent.

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

Response: The Supreme Court has described prosecutorial discretion as "carefully weighing the benefits of a prosecution against the evidence needed to convict, the resources of the public fisc, and the public policy of the State." *Bond v. United States*, 572 U.S. 844, 865 (2014). A substantive administrative rule change would be governed by the Administrative Procedure Act, which establishes the procedures for such rule

changes. 5 U.S.C. §§ 551-559.

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

Response: No. The Federal Death Penalty Act is authorized by statute. 18 U.S.C. § 3591 *et seq*. No statute can be unilaterally changed by the President.

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

Response: In *Alabama Association of Realtors v. Department of Health and Human Services*, 141 S. Ct. 2485, 2487 (2021), the Supreme Court concluded that plaintiffs were almost certain to prevail on their claim that the Centers for Disease Control and Prevention ("CDC") exceeded its statutory authority under the Public Health Service Act when it instituted a nationwide eviction moratorium in response to COVID-19. *See id.* at 2488 ("The applicants not only have a substantial likelihood of success on the merits—it is difficult to imagine them losing."). The Court held that in promulgating and extending the eviction moratorium, the CDC likely exceeded its authority under § 361(a) of the Public Health Service Act, noting that "this provision has rarely been invoked–and never before to justify an eviction moratorium." *Id.* at 2487. The Court concluded that the moratorium put landlords at risk of irreparable harm and that the government's interests had decreased over time since the stay was granted. *Id.* at 2489-90. Ultimately, the Court concluded held that for a federally imposed eviction moratorium to continue, Congress must specifically authorize it. *Id.* at 2490.

**44. Is it appropriate for a prosecutor to publicly announce that they are going to prosecute a member of the community before they even start an investigation as to that person's conduct?**

Response: No.

**Senator Josh Hawley**
**Questions for the Record**

**Georgia Alexakis**
**Nominee, U.S. District Judge 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. Supreme Court precedent instructs lower courts to look to "historical practices and understandings" when interpreting certain provisions of the Constitution, including examining the Constitution's "[n]ormal meaning, " as it would have "been known to ordinary citizens in the founding generation." *See*, *e.g.*, *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 535-36 (2022) (directing courts to conduct "[a]n analysis focused on original meaning and history" for purposes of the Establishment Clause); *District of Columbia v. Heller*, 554 U.S. 570, 576 (2008) ("[T]he Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary . . . meaning."); *id.* at 581-86 (consulting founding-era sources to interpret the words "arms," "keep," and "bear" for purposes of the Second Amendment).

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

   Response: If confirmed, I would faithfully apply Supreme Court and Seventh Circuit precedent in deciding whether and 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 is plain. *See Bostock v. Clayton Cnty., Georgia*, 590 U.S. 644, 673-74 (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, accepted canons of statutory construction, and cases from other jurisdictions as sources of persuasive authority. If these additional resources do not provide sufficient guidance, I would look to legislative history to the extent such analysis is permitted under applicable precedent from the Supreme Court and Seventh Circuit. *See, e.g.*, *Bostock*, 590 U.S. at 674-75

("To ferret out . . . shifts in linguistic usage or subtle distinctions between literal and ordinary meaning, this Court has sometimes consulted the understandings of the law's drafters as some (not always conclusive) evidence.").

**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, if any, I am authorized to consider when interpreting a statutory provision that has not been interpreted in binding Supreme Court or Seventh Circuit precedent and the text of which is ambiguous. The Supreme Court has identified some legislative history as more probative of legislative intent than others. For example, in *Garcia v. United States*, the Court identified committee reports, "which represent[t] the considered and collective understanding of those Congressmen involved in drafting and studying proposed legislation," as more probative than "the passing comments of one Member" and "casual statements from the floor debates." 469 U.S. 70, 76 (1984) (internal quotations omitted).

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

Response: It is generally inappropriate to consider foreign law when interpreting the Constitution. I am aware, though, that the Supreme Court has considered historical laws of England when evaluating the original public meaning of constitutional provisions, such as the Second Amendment and the Sixth Amendment's Confrontation Clause. *See, e.g.*, *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022); *Giles v. California*, 554 U.S. 353 (2008).

**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 a death-row inmate "must establish that the State's method of execution presents 'a substantial risk of serious harm'—severe pain over and above death itself" and "'must identify an alternative [method] that is feasible, readily implemented, and in fact significantly reduce[s]' the risk of harm involved." *See Nance v. Ward*, 597 U.S. 159, 164 (2022) (quoting *Glossip v. Gross*, 576 U.S. 863, 877 (2015)) (alterations in original).

**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: A plaintiff challenging state governmental action as placing a substantial burden on the free exercise of religion must initially demonstrate that such action has burdened a sincere religious practice pursuant to a policy that is neither "neutral" nor "generally applicable," *see Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 525 (2022), including by prohibiting particular religious activity while simultaneously permitting or treating more favorably comparable secular activity, *see Tandon v. Newsom*, 593 U.S. 61, 62 (2021). In addition, facially neutral state action is not actually neutral if it encompasses hostility concerning or targets a religion. *See Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n*, 584 U.S. 617, 634-35 (2018). If a law or policy allows the government to make individualized, discretionary exemptions, it is likely not neutral or generally applicable, and would fail strict scrutiny. *See Fulton v. City of Philadelphia*, 593 U.S. 522, 533 (2021). Once a plaintiff's initial burden is met, the government action is subject to strict scrutiny review to determine whether the government action "was justified by a compelling state interest and was narrowly tailored in pursuit of that interest." *Kennedy*, 597 U.S. at 525. In the context of the Religious Freedom Restoration Act of 1993, the Supreme Court also has held that forcing one to choose between "sincere religious beliefs" and "economic consequences [that] will be severe" imposes a substantial burden on the exercise of religion. *See Burwell v. Hobby Lobby*, 573 U.S. 682, 720-23 (2014).

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: Please see my response to Question 8.

**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 *Burwell v. Hobby Lobby*, 573 U.S. 682, 725 (2014), the Supreme Court explained that "it is not for [courts] to say that [an individual's] religious beliefs are mistaken or insubstantial." Instead, the question is whether the belief reflects "an honest conviction." *Id.* Similarly, in *Korte v. Sebelius*, 735 F.3d 654, 683 (7th Cir. 2013), the Seventh Circuit explained, in the context of the Religious Freedom Restoration Act, that "the substantial-burden inquiry does *not* invite the court to determine the centrality of the religious practice to the adherent's faith." (Emphasis in original.) It added: "And free-exercise doctrine makes it clear that the test for substantial burden does not ask whether the claimant has correctly interpreted his religious obligations . . . Indeed, that inquiry is prohibited." *Id.* (internal citations omitted). "The religious objection must be both sincere and religious in nature," but "it is not within the judicial function and judicial competence to inquire whether [the adherent has] . . . correctly perceived the commands of [his] . . . faith." *Id.* (quoting *Thomas v. Review Bd. of the Ind. Em't Sec. Div.,* 450 U.S. 707, 716 (1981) (alterations and omissions in original).

**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 confers 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 Justice Holmes to mean that the judiciary is not permitted to replace the judgment of the legislature with its own. In particular, Justice Holmes wrote: "If it were a question whether I agreed

with [the economic theory articulated by the *Lochner* majority], I should desire to study it further and long before making up mind. *But I do not conceive that to be my duty*, because I strongly believe that my agreement or disagreement has nothing to do with the right of a majority to embody their opinions in law." *Lochner*, 198 U.S. at 75 (emphasis added). Instead, Justice Holmes continued, the judiciary's role was to decide "whether statues . . . conflict with the Constitution of the United States." *Id.* at 76. As a judicial nominee, I am precluded from commenting on the quality of the reasoning of any particular Supreme Court decision under Canon 3(A)(6) of Code of Conduct for United States Judges. I do agree, however, that separation of powers is an important constitutional principle.

**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, I am precluded from commenting on the quality of the reasoning of any particular Supreme Court decision under Canon 3(A)(6) of Code of Conduct for United States Judges. I understand that, as the Supreme Court has explained, that "[t]he doctrine that prevailed in *Lochner* . . . and like cases—that due process authorizes courts to hold laws unconstitutional when they believe the legislature has acted unwisely—has long since been discarded." *See Ferguson v. Skrupa*, 372 U.S. 726, 730 (1963). If confirmed, I would faithfully follow binding Supreme Court and Seventh Circuit precedent.

**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 consistent with the manner in which the Supreme Court employed it in *Trump v. Hawaii*: "*Korematsu* was gravely wrong the day it was decided, has been overruled in the court of history, and—to be clear—'has no place in law under the Constitution.'" 585 U.S. 667, 710 (2018) (citing *Korematsu v. United States*, 323 U.S. 214, 248 (1944)) (Jackson, J., dissenting).

**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: There are Supreme Court opinions that are no longer good law because, although not "formally overruled by the Supreme Court," they were overruled by constitutional amendment. *See Chisholm v. Georgia*, 2 U.S. 419 (1793) (overruled by the Eleventh Amendment); *Dred Scott v. Sandford*, 60 U.S. 393 (1857) (overruled by the Thirteenth and Fourteenth Amendments).

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

Response: Please see my response to Question 14.

**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: As a judicial nominee, I am precluded from commenting on the quality of any particular judicial rationale under Canon 3(A)(6) of Code of Conduct for United States Judges. If confirmed, I would faithfully follow binding Supreme Court and Seventh Circuit precedent. I do understand that in one case, the Supreme Court held that market share of 80 to 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).

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

Response: Please see my response 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 on this question. I understand that in one case, the Supreme Court held that market share of 80 to 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). I am not aware of any Supreme Court or Seventh Circuit precedent specifying a minimum market share for a monopoly under § 2 of the Sherman Act.

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

Response: Black's Law Dictionary (11th ed. 2019) defines the term "federal common law" as "[t]he body of decisional law derived from federal courts when adjudicating federal questions and other matters of federal concern, such as disputes between the states and foreign relations, but excluding all cases governed by state law."

**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 response to Question 17(a).

**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); *accord Florida v. Powell*, 559 U.S. 50, 59 (2010); *PruneYard Shopping Ctr. v. Robins*, 447 U.S. 74, 81 (1980).

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

Response: As a judicial nominee, I am precluded from commenting on the quality of the reasoning of any particular Supreme Court decision under Canon 3(A)(6) of Code of Conduct for United States Judges. As prior judicial nominees have noted, however, 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: Federal Rule of Civil Procedure 65 governs injunctions. Although the Supreme Court has reviewed nationwide or universal injunctions, *see, e.g. Trump v. Hawaii*, 585 U.S. 667 (2018), I am not aware of any precedential opinions the Supreme Court has issued specifically addressing the legal authority for such injunctions. The Seventh Circuit has written 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, 912-16 (7th Cir. 2020).

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

Response: Please see my response to Question 19.

**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). "For instance, a nationwide injunction can truncate the process of judicial review, elevating the judgment of a single district court." *Id.*; *see also id.* ("Moreover, the potential for forum shopping is a real hazard."). The Seventh Circuit continued: "In 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 response 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; "a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front." *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" when "doing so would intrude upon the independence of the state courts and their ability to resolve the cases before them." *J.B. v. Woodard*, 997 F.3d 714, 721-22 (7th Cir. 2021). "A common thread underlying the Supreme Court's abstention cases is that they all implicate (in one way or another and to different degrees) underlying principles of equity, comity, and federalism foundation to our federal constitutional structure." *Id.* at 722.

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 *Thibodaux* and *Burford* abstention doctrines apply (1) "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 (2) "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" and "principles of federalism warrant deference to a state's regulatory regime." *See Hammer v. United States Dep't of Health & Hum. Servs.*, 905 F.3d 517, 531 (7th Cir. 2018); *Louisiana Power & Light Co. v. City of Thibodaux*, 360 U.S. 25 (1959).

The *Colorado River* abstention doctrine permits a court to abstain "in order to conserve federal judicial resources only in 'exceptional circumstances,' where the resolution of existing concurrent state-court litigation could result in 'comprehensive disposition of litigation.'" *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 813, 817 (1976); *see also Driftless Area Land Conservancy v. Valcq*, 16 F.4th 508, 515 (7th Cir. 2021).

The *Pullman* abstention doctrine permits a court to abstain "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: Whether damages or injunctive relief, or a combination of the two, provides a better form of relief depends on the parties' claims and the facts before the court. For example, in *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19 (2020), the Supreme Court concluded that injunctive relief was warranted because "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury."

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

Response: To be protected under substantive due process, rights must be "deeply rooted in this country's history and tradition" and "implicit in the concept of ordered liberty" "such that neither liberty nor justice would exist if they were sacrificed." *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997); *see also Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 231 (2022). The government may infringe on these fundamental rights only if the infringement is narrowly tailored to serve a compelling governmental interest. Examples of rights protected under substantive due process 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, *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 response to Question 8.

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

Response: "[T]he Free Exercise Clause protects religious exercises, whether communicative or not." *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 523 (2022). Black's Law Dictionary (11th ed. 2019) defines the term "worship" as a "form of religious devotion, ritual, or service showing reverence, [especially] for a divine being or supernatural power." The Free Exercise Clause therefore includes, but is not limited to, the freedom of 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 responses to Questions 8 and 10.

**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 response 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: Based on its plain language, the Religious Freedom Restoration Act "applies to all Federal law, and the implementation of that law, whether statutory or otherwise." 42 U.S.C. § 2000bb-3(a). The statute provides that it shall not be "construed to authorize any government to burden any religious belief." 42 U.S.C. § 2000bb-3(c). *See also Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania*, 140 S. Ct. 2367, 2383 (2020).

**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 permit trial courts or counsel to define reasonable doubt for the jury. *See United States v. Bruce*, 109 F.3d 323, 329 (7th Cir. 1997) ("It is well established in this Circuit . . . that neither trial courts nor counsel should attempt to define 'reasonable doubt' for the jury."). Based on my research, 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."). If confirmed, I would faithfully follow Supreme Court and Seventh Circuit precedent.

**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 the merits of a matter pending or impending in any court (Canon 3(A)(6)) and from acting in a manner that compromises public confidence in the integrity and impartiality of the judiciary

(Canon 2(A)). If confirmed and such an issue came before me, I would faithfully apply Supreme Court and Seventh Circuit precedent.

**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 the merits of a matter pending or impending in any court (Canon 3(A)(6)) and from acting in a manner that compromises public confidence in the integrity and impartiality of the judiciary (Canon 2(A)). If confirmed and such an issue came before me, I would faithfully apply Supreme Court and Seventh Circuit precedent.

**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 the merits of a matter pending or impending in any court (Canon 3(A)(6)) and from acting in a manner that compromises public confidence in the integrity and impartiality of the judiciary (Canon 2(A)). If confirmed and such an issue came before me, I would faithfully apply Supreme Court and Seventh Circuit precedent.

**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: Opinions designated as "unpublished," "not for publication," "nonprecedential," or "not precedent are permitted by Federal Rule of Appellate Procedure 32.1. *See also* Rule 32.1(b) for the U.S. Court of Appeals for the Seventh Circuit.

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

Response: Please see my response to Question 28(a).

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

Response: No. *See* Rule 32.1(b) for the U.S. Court of Appeals for the Seventh Circuit (unpublished orders of the court "are not treated as precedents").

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

Response: Please see my response to Question 28(a).

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

Response: Yes. *See* Fed. R. App. P. 32.1 ("A court may not prohibit or restrict the citation of federal judicial opinions, orders, judgments, or other written dispositions that have been … designated as 'unpublished,' 'not for publication,' 'nonprecedential,' 'not precedent,' or the like" and "issued on or after January 1, 2007"). But I would do so consistent with Rule 32.1(b) for the U.S. Court of Appeals for the Seventh Circuit, which directs that unpublished orders of the court not be treated 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, consistent with Fed. R. App. P. 32.1.

**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, consistent with Fed. R. App. P. 32.1.

**29. In your legal career:**

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

Response: Two.

**b. How many have you tried as second chair?**

Response: Eight.

**c. How many depositions have you taken?**

Response: I have taken at least 15 depositions. I do not know the precise number.

**d. How many depositions have you defended?**

Response: I have defended at least 15 depositions. I do not know the precise number.

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

Response: I have argued at least 30 cases before a federal appellate court. I do not know the precise number.

**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: I have argued at least 15 dispositive motions before trial courts. I do not know the precise number.

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

Response: I have argued at least 50 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: As an attorney, I have had to track billable hours in only one year of practice. To the best of my recollection, I billed approximately 1,800 hours that year.

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

Response: To the best of my recollection, I dedicated approximately 50 to 100 hours to pro bono work.

**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 understand this statement to mean that a judge's personal views must not bear on the outcome of the cases before her. Instead, a judge must fairly and impartially apply the law to the facts and issues before her.

**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 a judge must fairly and impartially apply the law to the facts and issues before her. Judges do not make laws; that is the role of legislature.

**b. Do you agree or disagree with this statement?**

Response: I agree with this statement, as I understand it.

**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 understand this statement to mean that a judge's personal views must not bear on the outcome of the cases before her. Instead, a judge must fairly and impartially apply the law to the facts and issues before her.

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

Response: I agree with Justice Holmes, as I understand his statement. If confirmed, I would faithfully apply binding precedent to the facts and issues before me.

**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: *Bel Canto* (Ann Patchett); *Never Enough: When Achievement Culture Becomes Toxic—and What We Can Do About It* (Jennifer Breheny Wallace); *Born a Crime* (Trevor Noah).

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

Response: I am not aware of a consensus definition of "systemic racism," nor do I have a personal definition of that term. Although I am aware of public discussion and debate on this question, as a judicial nominee, the Code of Conduct for United States Judges prohibits me from making public comments on the merits of a matter pending or impending in any court (Canon 3(A)(6)) and from acting in a manner that compromises public confidence in the integrity and impartiality of the judiciary (Canon 2(A)). I recognize, however, that our Constitution guarantees equal protection under the law to all, and if I am confirmed, I will work to ensure that all parties who come before me are afforded that protection.

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

Response: I am most proud of the work I have done as an Assistant United States Attorney. It has been an honor to represent the United States and enforce the rule of law. Every case I have worked on as a prosecutor 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 represented my client to the best of my abilities, as required by the rules of professional conduct.

**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 has 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 relevant precedent and 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: I am not aware of any Supreme Court or Seventh Circuit precedent that addresses this question. In *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215, 263 (2022), the Supreme Court stated that its "opinion is not based on any view about if and when prenatal life is entitled to any of the rights enjoyed after birth." As a judicial nominee, the Code of Conduct for United States Judges prohibits me from making public comments on the merits of a matter pending or impending in any court (Canon 3(A)(6)) and from acting in a manner that compromises public confidence in the integrity and impartiality of the judiciary (Canon 2(A)).

**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: No.

**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)?**
**b. The Supreme Court's substantive due process precedents?**
**c. Systemic racism?**
**d. Critical race theory?**

Response to Question 45 and all subparts: No.

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

**a. Apple?**

Response: Consistent with the financial net worth statement attached to my Senate Judiciary Questionnaire, my spouse currently owns shares in Apple.

**b. Amazon?**

Response: Consistent with the financial net worth statement attached to my Senate Judiciary Questionnaire, my spouse currently owns shares in Amazon.

**c. Google?**

Response: Consistent with the financial net worth statement attached to my Senate Judiciary Questionnaire, my spouse currently owns shares in Google (Alphabet).

**d. Facebook?**

Response: Consistent with the financial net worth statement attached to my Senate Judiciary Questionnaire, my spouse currently owns shares in Facebook (Meta Platforms).

**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 have primarily authored or edited was filed with my name on it. As a supervisor in the United States Attorney's Office for the Northern District of Illinois, I have edited and authored portions of briefs filed by colleagues. There is no way for me to determine 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 response to Question 47.

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

Response: In my capacity as chief of appeals in the Criminal Division of the United States Attorney's Office for the Northern District of Illinois, I have conceded error in the Seventh Circuit Court of Appeals on behalf of the government, where legal research and a review of the record has led to the conclusion that reversible error took place in a district court proceeding. In those instances, I have confessed error on behalf of the government after consulting with, and receiving authorization from, the Criminal Appellate Division of the Department of Justice.

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

Response: Please see my response to Question 48.

**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 are expected to answer all questions truthfully and to the best of their ability.

**Senator John Kennedy**
**Questions for the Record**

**Georgia Alexakis**

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

   Response: Yes. The Supreme Court has held that the death penalty is not *per se* unconstitutional under the Eighth Amendment. *See Gregg v. Georgia*, 428 U.S. 153 (1976). Congress has legislated what offenses are punishable by death and the procedures that need to be followed for imposition of the death penalty in a federal proceeding. 18 U.S.C. §§ 3591-99.

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, including your approach to constitutional and statutory interpretation. Be as specific as possible.**

   Response: If confirmed, I would adopt a judicial philosophy based on humility, fidelity, and respect. In terms of humility: Federal courts are courts of limited jurisdiction, and a district court's role is to decide only the issues before it, based only on the facts before it, while applying binding precedent and statutes enacted by legislative bodies. In terms of fidelity: I would faithfully apply Supreme Court and Seventh Circuit precedent, setting aside any personal beliefs I may have. In terms of respect: I would treat all litigants with dignity and care.

   With respect to constitutional interpretation, I would faithfully apply Supreme Court and Seventh Circuit precedent interpreting the constitutional provision at issue. If there were no such precedent, I would begin with the text of the constitutional provision, interpreting it in a manner consistent with the method of interpretation that the Supreme Court has used. For example, in *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court looked to the original public meaning of the Second Amendment.

With respect to statutory interpretation, I would faithfully apply Supreme Court and Seventh Circuit precedent interpreting the statutory provision at issue. If there were no such precedent, I would begin with the text of the statute, and where the meaning of the statute was plain, my work would end there. If the text were 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, accepted canons of statutory construction, and cases from other jurisdictions as sources of persuasive authority. If these additional resources do not provide sufficient guidance, I would look to legislative history to the extent such analysis is permitted under applicable precedent from the Supreme Court and Seventh Circuit. *See, e.g.*, *Bostock v. Clayton Cnty., Georgia*, 590 U.S. 644, 674-75 (2020) ("To ferret out . . . shifts in linguistic usage or subtle distinctions between literal and ordinary meaning, this Court has sometimes consulted the understandings of the law's drafters as some (not always conclusive) evidence.").

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

   Response: Yes. *See, e.g.*, *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022).

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: With respect to constitutional interpretation, I would faithfully apply Supreme Court and Seventh Circuit precedent interpreting the constitutional provision at issue. If there were no such precedent, I would begin with the text of the constitutional provision, interpreting it in a manner consistent with the method of interpretation that the Supreme Court and the Seventh Circuit have used. For example, in *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court looked to the original public meaning of the Second Amendment.

8. **Is textualism a legitimate method of statutory interpretation?**

   Response: Yes. *See, e.g.*, *Bostock v. Clayton Cnty., Georgia*, 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: Legislative history plays no role in interpreting a statutory provision where the meaning of the statute is plain. *See Bostock v. Clayton Cnty., Georgia*, 590 U.S. 644, 673-74 (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, accepted canons of statutory construction, and cases from other jurisdictions as sources of persuasive authority. If these additional resources do not provide sufficient guidance, I would look to legislative history to the

extent such analysis is permitted under applicable precedent from the Supreme Court and Seventh Circuit. *See, e.g.*, *Bostock*, 590 U.S. at 674-75 ("To ferret out . . . shifts in linguistic usage or subtle distinctions between literal and ordinary meaning, this Court has sometimes consulted the understandings of the law's drafters as some (not always conclusive) evidence.").

**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 meaning of the Constitution is "fixed according to the understandings of those who ratified it," although "the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated." *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 28 (2022). *See also United States v. Jones*, 565 U.S. 400, 404-05 (2012) (holding that installation of a tracking device was "a physical intrusion [that] would have been considered a 'search' within the meaning of the Fourth Amendment when it was adopted"). I further understand that the Constitution can be modified by amendment, as laid out in Article V of the Constitution.

**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 v. Cortesluna*, 595 U.S. 1, 5 (2021), the Supreme Court held that an officer is entitled to qualified immunity where the officer's conduct "does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." (quoting *White v. Pauly*, 137 S. Ct. 548, 551 (2017)). In *Rivas-Villegas*, Cortesluna brought suit under 42 U.S.C. § 1983, claiming that Officer Rivas-Villegas used excessive force in violation of the Fourth Amendment. The Supreme Court held that Officer Rivas-Villegas was entitled to qualified immunity because Cortesluna had not "identified any Supreme Court case that addresses facts like the ones at issue here" and therefore Officer Rivas-Villegas did not have notice that the specific conduct was unlawful. *Id.* at 6. The Court further explained that "[a] right is clearly established when it is 'sufficiently clear that every reasonable official would have understood that what he is doing violates that right' and that the inquiry must consider the specific context of the case, as opposed to a broad general proposition." *Id.* at 5-6 (internal quotations and citations omitted).

**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: Although the Supreme Court has reviewed nationwide or universal injunctions, *see, e.g. Trump v. Hawaii*, 585 U.S. 667 (2018), I am not aware of any precedential opinions the Supreme Court has issued specifically addressing the legal authority for such injunctions. The Seventh Circuit has written 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, 912-16 (7th Cir. 2020). An injunction is a drastic and extraordinary remedy, which should not be granted as a matter of course. *See 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*, 961 F.3d at 916-17 (internal quotations and citation omitted). "For instance, a nationwide injunction can truncate the process of judicial review, elevating the judgment of a single district court." *Id.*; *see also id.* ("Moreover, the potential for forum shopping is a real hazard."). The Seventh Circuit continued: "In 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.*

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

Response: No.

**14. Will you fully and faithfully apply all precedents of the U.S. Supreme Court and the U.S. Court of Appeals under which you would sit?**

Response: Yes.

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

Response: Dicta is not binding precedent. If confirmed, I would faithfully apply Supreme Court and Seventh Circuit binding precedent.

**16. Have you ever considered an applicant's race, sex, or religion when making a hiring decision? If so, please provide full details.**

Response: No.

**17. When reviewing applications from persons seeking to serve as an intern, extern, or law clerk in your chambers, what role would the race, sex, or religion of the applicants play in your consideration?**

Response: None.