Senator Lindsey Graham, Ranking Member
Questions for the Record
Noël Wise
Nominee to be United States District Judge for the Northern District of California

Instructions:

You must provide an answer specific to each question and sub-question. You may not group your answer to one question with other questions nor may you answer questions by cross-referencing other answers. Failure to follow these instructions will be interpreted as an intentional evasion of the question.

With respect to questions that ask for a yes or no answer, please start your response with 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 follow these instructions will be interpreted as an intentional evasion of the question.

1. **While a judge on the California Superior Court, you wrote an article for "Time" magazine titled "Judge: Gender Laws Are at Odds With Science" The article states sex is a "continuum" and it is "virtually impossible for judges to consistently apply a law that permits or prohibits conduct based on whether someone is a man or a woman."**

    a. **Why would you write such a controversial article while sitting as a Judge?**

    Response: The article reflects a specific and well-documented issue that intersects medical science and the law: "[m]any individuals are born with sex chromosome, endocrine or hormonal irregularities, and their birth certificates are inaccurate because in the United States birth records are not designed to allow doctors to designate an ambiguous sex." The commentary of Judicial Canon 4 states, "As a judicial officer and a person specially learned in the law, a judge is in a unique position to contribute to the law, the legal system, and the administration of justice, including revising substantive and procedural law and improving criminal and juvenile justice. To the extent that the judge's time permits and impartiality is not compromised, the judge is encouraged to do so, either independently or through a bar association, judicial conference, or other organization dedicated to the law." These principles are consistent with the California Rules of Court, including the Standards of Judicial Administration. Judges at every level, including Supreme Court Justices: write articles on a range of legal, procedural, and other topics; serve as panelists for legal organizations such as bar associations; teach at colleges and law schools; and make public speeches, including at commencement ceremonies. Throughout my career, I have endeavored to write articles that seek to examine, clarify, and contribute to the law as the Judicial Canons encourage. Yet, at all times and in all cases, I consistently apply the law and all binding precedent, irrespective of whether it comports with my personal views. The objective evidence is that I have issued

over 10,000 decisions, and I have only been overturned in three instances.

b. As a Judge would you find it "impossible" to enforce a law banning men from women's locker rooms? Please provide a yes or no answer.

Response: Pursuant to Article II, Section 1 of the Constitution, the Executive Branch alone has the exclusive authority to enforce the law. *United States v. Texas*, 599 U.S. 670, 678-79 (2023) ("The Executive Branch—not the Judiciary—makes arrests and prosecutes offenses on behalf of the United States."); *see also United States v. Nixon*, 418 U.S. 683, 693 (1974) (stating "the Executive Branch has exclusive authority and absolute discretion to decide whether to prosecute a case"). The Judicial Branch does not enforce the law; instead, pursuant to Article III, Section 2 of the Constitution, once the Executive Branch has elected to enforce the law and there is a case or controversy at issue, it is "our job to apply faithfully the law Congress has written . . . ." *Henson v. Santander Consumer USA Inc.*, 582 U.S. 79, 89 (2017). As I have demonstrated during the last ten years I have served as a judge, at all times and in all cases, I faithfully apply the law and all binding precedent, irrespective of whether it comports with my personal views.

c. As a Judge would you find it "impossible" to enforce a law banning the bureau of prisons from placing a man in a women's prison? Please provide a yes or no answer.

Response: Pursuant to Article II, Section 1 of the Constitution, the executive branch alone has the exclusive authority to enforce the law. *United States v. Texas*, 599 U.S. 670, 678-79 (2023) ("The Executive Branch—not the Judiciary—makes arrests and prosecutes offenses on behalf of the United States."); *see also United States v. Nixon*, 418 U.S. 683, 693 (1974) (stating "the Executive Branch has exclusive authority and absolute discretion to decide whether to prosecute a case"). The judicial branch does not enforce the law; instead, pursuant to Article III, Section 2 of the Constitution, once the executive branch has elected to enforce the law and there is a case or controversy at issue, it is "our job to apply faithfully the law Congress has written . . . ." *Henson v. Santander Consumer USA Inc.*, 582 U.S. 79, 89 (2017). As I have demonstrated during the last ten years I have served as a judge, at all times and in all cases, I faithfully apply the law and all binding precedent, irrespective of whether it comports with my personal views.

d. Do you believe it is ever appropriate to place a biological man in a women's prison? Please provide a yes or no answer.

Response: During the ten years I have served as a judge (at the trial court and on assignment at the California 2nd District Court of Appeal), I have never encountered this issue. If this issue were to come before me in the future, I would consider the facts and the arguments presented by the parties, and I would apply the law including all binding precedent.

2. **In the same article you wrote "[o]ur biological variability means that a two-bathroom, based on two-sex approach is inadequate." When asked about this position by Senator Lee you responded, "the article that I wrote took no position about who should be able to use a [girls] bathroom."**

   a. **Did you mislead the committee?**

      Response: No. My testimony was accurate and consistent with the content of my 2017 article as described in my response to Question 1.a.

3. **In the above mentioned article you wrote:**

   In the United States, judges are obligated to see the world through a secular lens. They must apply the law without the influence of any religious construct or political agenda. If modern science recognizes that sex has countless natural permutations, and if birth certificates, physical observation and even chromosomal testing cannot reliably categorize every individual as either male or female, then our judiciary cannot be required to make gender findings antithetical to that reality. When legislators blur the lines of church and state and enact laws that permit or prohibit conduct based on biologic gender as only male or female - whether it is for the purpose of authorizing marriage or designating the use of public bathrooms - they place an impossible burden on our judiciary, and ultimately on our country and all of its people. (Emphasis added).

   a. **Do you still agree with this viewpoint?**

      Response: The article was published in 2017 and is now more than seven years old. The thesis of the paragraph (noted in this question), which remains consistent with the Establishment Clause of the First Amendment and the Judicial Canons, is set forth in the first two sentences: "In the United States, judges are obligated to see the world through a secular lens. They must apply the law without the influence of any religious construct or political agenda." The research that supported the article was drawn from numerous authorities from the time, including statistics from the World Health Organization, which reported that "1 in every 2,000 births worldwide are visibly intersex, because the child's genitals are either incomplete or ambiguous, which equates to five newborn Americans a day." Although I have not exhaustively researched the current data on this issue, I am aware that there are more recent studies, and academic articles on sex chromosomal abnormalities (including those published with the U.S. National Center for Biotechnology Information) that provide a range of new data, including the wider impacts of these abnormalities such as on procreation, infertility and miscarriage.

4. **In the same article you wrote "[t]he United States' stringent adherence to a two-sex paradigm is inconsistent with science."**

   a. **Specifically explain what "science" you are referencing.**

      Response: Please see my responses to Questions 1.a. and 3.a.

   b. **Is evolutionary biologist Richard Dawkins incorrect in claiming that science demonstrates "[s]ex is a true binary?" Please provide a yes or no answer.**

      Response: I am not familiar with Richard Dawkins or the basis or context for the claim ascribed to him.

   c. **Is someone a "science denier" for "adhering to a two-sex paradigm"? Please provide a yes or no answer.**

      Response: I have no opinion as to this question other than to make clear that I would not characterize or stereotype someone based on their sincerely held beliefs, personal or political views, or life experiences.

5. **In the above-mentioned article, you wrote**:

   In 2016, I received a request from parents seeking to change the name and sex of their baby's birth certificate. The parents were initially informed they gave birth to a daughter. Genital irregularities and months of additional tests revealed that from a chromosomal and hormonal standpoint their child was, while not strictly genetically male, more "properly" categorized as a son. I granted their request to modify the birth certificate to designate the child as male. The new birth certificate replaced the original, yet neither was precisely accurate from a biological perspective.

   What is this cases name and docket number?

   Response: I heard this case approximately eight years ago and I do not recall the name or docket number. My best recollection is that it was heard on a large name change calendar that I was covering for a colleague.

6. **In 2020, while a Superior Court Judge, you wrote an article titled "America's Judiciary Doesn't Look Like America" in the "Atlantic" magazine. In this article you criticize President Trump for appointing a judiciary that "does not look like America." You also claim President Trump's appointments "reflects an unapologetic preference for the homogeneity of what many Americans hoped was a bygone era."**

   a. **Isn't it inappropriate for a sitting Judge to write such a politically charged statement?**

Response: The article referenced in this question provided statistical data regarding the federal courts over a historical period, and it used information drawn in part from the U.S. Courts database. The commentary of Judicial Canon 4 states, "As a judicial officer and a person specially learned in the law, a judge is in a unique position to contribute to the law, the legal system, and the administration of justice, including revising substantive and procedural law and improving criminal and juvenile justice. To the extent that the judge's time permits and impartiality is not compromised, the judge is encouraged to do so, either independently or through a bar association, judicial conference, or other organization dedicated to the law." These principles are consistent with the California Rules of Court, including the Standards of Judicial Administration. Judges at every level, including Supreme Court Justices: write articles on a range of legal, procedural, and other topics; serve as panelists for legal organizations such as bar associations; teach at colleges and law schools; and make public speeches, including at commencement ceremonies. Throughout my career, I have endeavored to write articles that seek to examine, clarify, and contribute to the law as the Judicial Canons encourage. Yet, at all times and in all cases, I consistently apply the law and all binding precedent, irrespective of whether it comports with my personal views. The objective evidence is that I have issued over 10,000 decisions, and I have only been overturned in three instances.

b. Do you agree that we should appoint Judges on the basis on merit without regards to sex or race?

Response: Article II, Section 2 of the Constitution grants the President the power to appoint "by and with the Advice and Consent of the Senate," "Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other Officers of the United States . . . ." As a sitting state court judge and a federal district court judicial nominee, it is inappropriate for me to offer an opinion on the constitutionality of a political decision. *See* Canon 3(A)(6) and Canon 5.

7. In 2020, while a Superior Court Judge, you wrote an article titled "Judicial ethics and independence must guide judges' responses to racial injustice." in the "Daily Journal." In this article you wrote in support of the California Judges Association's view that Judges may "participate in demonstrations that denounce racism, support equal justice, and reinforce our constitutional rights to free speech and peaceable assembly."

a. Have you attended any protests or political events while a sitting Judge?

Response: No.

b. Have you attended any demonstrations or events linked to the "black lives matter" movement? If yes, please provide the date, location, and name of the event.

Response: No.

c. **Would it be inappropriate for a sitting Judge to take part in the "March for Life"? Please provide a yes or no answer.**

Response: Judges must be guided by their oath of office, the law, and the Judicial Canons. In order to answer this question the judge who was considering such participation would need to thoughtfully examine all of the unique and attendant circumstances and determine whether it would be possible or advisable within the ethical guidelines, to participate.

8. **From 2014 to 2024, you served on the board of Girls, Inc. of Alameda County. Janet Loduca, a fellow "board member of Girls, Inc. of Alameda County" spoke at your investiture. She spoke about your involvement in Girls, Inc. of Alameda County and also invited attendees to visit a table at the investiture where they could make a donation to Girls, Inc. of Alameda County:**

> **So the example that I would like to share with you tonight is when I was co-chairing the gala event for Girls, Inc. And this wasn't just any gala event. This was a very special event to celebrate the grand opening of our new building in downtown Oakland which had been years in the work, and we needed some help on our committee.**
>
> **So I thought, "Oh, let me ask Noël. She will do it, right?" And of course she did not hesitate for a second. She agreed right away. She jumped right in with both feet. And with her help, the gala was our most successful fundraising event of the entire organization's history. And she impressed the organization so much that she soon became a board member herself. So I said I would say a few words about Girls, Inc.**
>
> **Girls, Inc. is an organization that is dedicated to inspiring all girls to be strong, smart and bold, qualities which I might say Noël shares. Girls, Inc. serves underprivileged girls and their families from kindergarten through high school, and our programs are focused on academic success, physical, mental and sexual health, and developing confidence to take on positive risks. It's an organization that literally transforms lives not just for the girls who are in the programs but for generations to come.**
>
> **So we have several board members. And Linda, our CEO, if you could just raise your hand. There's a table over there if you would like any additional information about Girls, Inc. or you would like to make a donation tonight to any one of us because we love to talk about Girls, Inc. (Emphasis added).**

a. **Is it appropriate to host a donation table for an organization like "Girls, Inc." at a judicial investiture?**

Response: I did not host a donation table at my investiture or suggest or encourage donations to any organization. First, when Ms. Loduca mentioned in her remarks that I assisted with a Girls Inc. of Alameda County gala, she was referencing an event that occurred before I was a judge. Second, Ms. Loduca did not tell me what she planned to talk about prior to my investiture. Third, the table Ms. Loduca mentioned was not a donation table, it was a table adjacent to the dance floor, where numerous guests for my investiture were sitting and standing, including two friends of mine who also sat on the Girls Inc. of Alameda County board.

9. **Girls, Inc. of Alameda County defines the meaning of "girl" as follows: "Girls' refers to gender-expansive youth (cis girls, trans girls, non-binary youth, gender non-conforming youth, gender queer youth, and any girl-identified youth)."**

a. **Do you disagree with this definition? Please provide a yes or no answer.**

Response: I have never seen nor heard this language at Girls Inc. of Alameda County. I do not have an opinion about this definition. The Merriam-Webster Dictionary (2nd ed. rev. 2000) defines girl as "a female child from birth to full growth."

10. **On June 21, 2023, "The Bay Area Reporter," published an article titled "Girls, Inc. helps teens thrive in challenging time." The article describes the experiences of Daisha, a "17-year-old Black nonbinary bisexual person." According to the article, Daisha "found" Girls Inc. of Alameda County at around 13 years old.**

When asked about the role of Girls Inc. of Alameda in her life, Daisha said, "I feel like Girls Inc. has shaped a lot of who I am, and it has helped me figure out what my values are and things along those lines." The article describes how the staff at Girls Inc. of Alameda "helped Daisha 'figure out' their identity."

a. **While a sitting Judge, what role did you play in assisting Girls, Inc. in its outreach to Alameda youth?**

Response: My primary role at Girls Inc. of Alameda County was to attend board meetings and related events. On several occasions I had direct contact with girls who were participating in programming. These events included when I volunteered to read in a kindergarten classroom, conducted practice interviews with high school girls to prepare them for job interviews, and helped provide feedback on college essays.

11. While a sitting Judge, have you made any financial donations to Girls, Inc.?

Response: Yes. Those charitable contributions were consistent with the ethical guidelines for judges as set forth in the Judicial Canons and the California Standards of Judicial Administration.

a. If yes, please list all donations to the group, noting the year and amount donated.

Response: I believe I began making charitable donations to Girls, Inc. of Alameda County approximately 12 years ago when I learned about its mission to promote literacy for underserved girls in early elementary school in inner city Oakland. As a former high school English teacher, I am deeply committed to improving literacy, particularly for disadvantaged youth. I no longer have records for all the donations I made, but my best recollection is that I donated about $3,000 each year. I have never donated to the national organization.

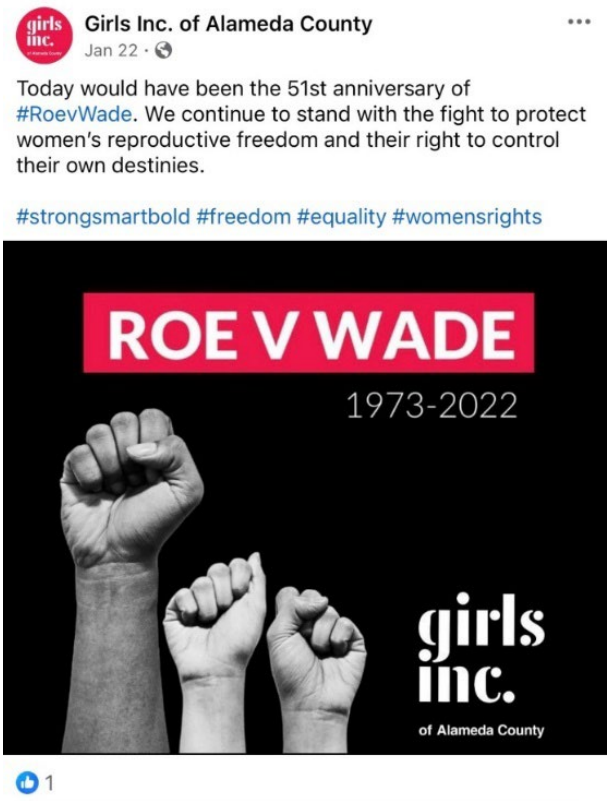
12. While a sitting Judge, have you solicited or otherwise facilitated any financial donations to Girls, Inc.?

Response: No.

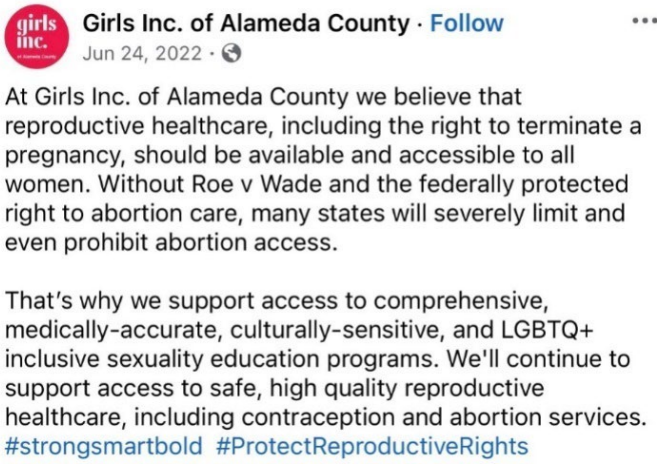
a. If yes, please list all donations to the group, noting the donor's name, the year of the donation, and amount donated.

Response: Please see my answer to Question 12.

13. On January 22, 2024, the Girls Inc. of Alameda County shared a Facebook post celebrating the anniversary of Roe v. Wade:



On June 24, 2022, the day *Dobbs v. Jackson Women's Health* was decided, Girls Inc. of Alameda County posted the following:



a. Were you aware that Girls, Inc. held the above discussed positions?

Response: No.

14. You are currently the presiding judge in *Vaughn v. Tesla*. Please describe the facts of this case, its current status, and any rulings you have made thus far.

Response: In 2017, Plaintiffs filed this putative class action alleging race discrimination at the Tesla factory in Fremont, California. There were two other judges that presided over the case until it was reassigned to me on January 18, 2024. Plaintiffs recently filed a third amended complaint. The parties are actively litigating the case and are engaged in discovery with the assistance of a discovery referee. Since the case was reassigned to me I have held numerous case management conferences, and have issued procedural orders (primarily related to scheduling and briefing), several discovery orders, and an order granting class certification for injunctive relief only (in which I determined that for various reasons, including due process, if plaintiffs want to seek damages they cannot do so as a class and will need to file individual cases).

15. Are you a citizen of the United States?

Response: Yes.

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

Response: No.

a. If yes, list all countries of citizenship and dates of citizenship.

Response: Please see my answer to Question 16.

b. If you are currently a citizen of a country besides the United States, do you have any plans to renounce your citizenship?

Response: Please see my answer to Question 16.

i. **If not, please explain why.**

Response: Please see my answer to Question 16.

17. 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.

18. 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.

19. 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 rarely, if ever, appropriate to consult the laws of foreign nations when interpreting the Constitution. However, I am aware of the Supreme Court's decision in *New York Rifle & Pistol Ass'n., Inc. v. Bruen*, 597 U.S. 1 (2022), in which the Court referenced English law when interpreting the Second Amendment.

20. 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 with this statement.

21. 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. In *Medellin v. Texas*, 552 U.S. 491, 504 (2008), the Supreme Court stated, "not all international law obligations automatically constitute binding federal law enforceable in United States courts."

22. Please define the term "prosecutorial discretion."

Response: Black's Law Dictionary (12th ed. 2024) defines "prosecutorial discretion' in criminal cases as a prosecutor's "power to choose from the options available in a criminal case, such as filing charges, prosecuting, not prosecuting, plea-bargaining, and recommending a sentence to the court." In *U.S. v. Batchelder*, 442 U.S. 114, 124 (1979), the Supreme Court stated, "Whether to prosecute and what charge to file or bring before a grand jury are decisions that generally rest in the prosecutor's discretion."

23. 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.

24. 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.

25. 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.

26. 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: Pursuant to 28 U.S.C. § 2255(a), "A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence." The timing of such motions are governed by 28 U.S.C. § 2255(f). A prisoner may also file a writ of habeas corpus pursuant to 28 U.S.C. § 2241.

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

Response: In *Students for Fair Admissions v. President & Fellows of Harvard College*, and *Students for Fair Admissions, Inc. v. University of North Carolina*, 600 U.S. 181 (2023), Students for Fair Admissions, a non-profit organization, brought claims against Harvard College and the University of North Carolina asserting that the universities' race-based admissions programs, violated the Equal Protection Clause of the Fourteenth Amendment, Title VI of Civil Rights Act, and federal law that prohibits racial discrimination in contracting. The Supreme Court held that the admissions programs did not survive strict scrutiny under the Equal Protection Clause and Title VI of the Civil Rights Act for various reasons. The Court held that although the colleges asserted compelling interests, the programs were not operated in a manner to be "sufficiently

measurable," the programs failed to articulate a meaningful connection between the means employed and the diversity goals, race may never be used as a "negative" or as a stereotype, and the programs lacked "sufficiently focused and measurable objectives" and "meaningful end points." *Id.* at 214-30.

28. 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: Between approximately 1995 and 1997, while I served as a trial attorney at the United States Department of Justice, I was a member of the panel that interviewed and hired law students to serve as summer interns at DOJ. The ultimate hiring decisions were made by the various Division Chiefs and the DOJ Human Resources Department. I also participated in interview panels for both potential associates and law partners while I was employed at Stoel Rives (between approximately 2002 and 2004), and for potential in-house counsel while I was employed at Pacific Gas and Electric Company (between 2004 and 2006). The ultimate hiring decisions in those instances were made by firm partners (Stoel Rives) and directors/executives in consultation with the HR department (PG&E).

29. 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.

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

Response: No.

31. 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: Not to my knowledge.

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: Please see my previous answer in response to Question 31.

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

Response: Yes. *See, e.g., Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll.*, 600 U.S. 181 (2023).

33. 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 held that, pursuant to the right to freedom of speech guaranteed in the First Amendment, it is impermissible for a state to require a website designer to create an expressive design if doing so compelled the designer to engage in speech with which she disagreed (in this instance the celebration of same-sex marriage).

34. 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: Yes. The Supreme Court cited *West Virginia State Board of Educ. v. Barnette*, 319 U.S. 624, 642 (1943), and referenced this specific language, in *303 Creative LLC v. Elenis*, 600 U.S. 570, 585-86 (2023).

35. 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: I would apply Supreme Court precedent to determine whether a law that regulates speech is content-based or content-neutral. Specifically, I would ask the questions and consider the parameters set out in *Reed v. Town of Gilbert*, 576 U.S. 155 (2015), where the Court stated, "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." *Id.* (citations omitted). "[T]he crucial first step in the content-neutrality analysis [is] determining whether the law is content neutral on its face. A law that is

content based on its face is subject to strict scrutiny regardless of the government's benign motive, content-neutral justification, or lack of "animus toward the ideas contained' in the regulated speech." *Id.* at 156 (citations omitted). "The same is true for laws that, though facially content neutral, cannot be 'justified without reference to the content of the regulated speech,' or were adopted by the government 'because of disagreement with the message' conveyed." *Id.* (quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989)).

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

Response: In *Counterman v. Colorado*, 600 U.S. 66, 69 (2023), the Supreme Court stated that, "True threats of violence are outside the bounds of First Amendment protection and punishable as crimes." "True threats are 'serious expression[s]' conveying that a speaker means to 'commit an act of unlawful violence.'" *Id.* at 74 (quoting *Virginia v. Black*, 583 U.S. 343, 359 (2003)). The standard for determining whether a statement is a true threat is "recklessness . . . . The State must show that the defendant consciously disregarded a substantial risk that his communications would be viewed as threatening violence. The State need not prove any more demanding form of subjective intent to threaten another." *Id.* at 69.

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

Response: In *U.S. Bank National Ass'n ex rel. CWCapital Asset Mgmt. LLC v. Village at Lakeridge, LLC*, 583 U.S. 387, 394 (2018), the Supreme Court stated that a "'basic' or 'historical' fact—address[es] questions of who did what, when or where, how or why." "[T]he appropriate methodology for distinguishing questions of fact from questions of law has been, to say the least, elusive" and beyond "elemental propositions, negative in form, the Court has yet to arrive at 'a rule or principle that will unerringly distinguish a factual finding from a legal conclusion.'" *Miller v. Fenton*, 474 U.S. 104, 113 (1985) (quoting *Pullman-Standard v. Swint*, 456 U.S. 273, 288 (1982)). To determine whether a question is one of fact or law, courts should consider whether the question requires the court to "expound on the law, particularly by amplifying or elaborating on a broad legal standard" (question of law) versus those questions that compel "them to marshal and weigh evidence, make credibility judgments, and otherwise address what we have (emphatically if a tad redundantly) called 'multifarious, fleeting, special, narrow facts that utterly resist generalization'" (question of fact). *U.S. Nat'l Bank Ass'n* at 396 (quoting *Pierce v. Underwood*, 487 U.S. 552, 561-62 (1988)).

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

Response: Pursuant to 18 U.S.C. § 3553(a), when engaged in sentencing, a judge must make an individualized determination as to the need for retribution, deterrence, incapacitation, and rehabilitation for each defendant and impose a sentence that is "sufficient, but not greater than necessary . . . ." Congress has not directed any one purpose as primary. If I am confirmed as a district court judge, consistent with the directive provided by Congress, I would appropriately consider each of these factors as well as any other binding precedent from the Supreme Court and the Ninth Circuit, including all precedent relevant to sentencing.

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

Response: As a sitting state court judge and a federal district court judicial nominee, it is generally not appropriate for me to opine or otherwise comment on the quality of Supreme Court decisions. *See* Canon 3(A)(6). If I am confirmed, I will apply all binding precedent from the United States Supreme Court and the Ninth Circuit.

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

Response: As a sitting state court judge and a federal district court judicial nominee, it is generally not appropriate for me to opine or otherwise comment on the quality of Ninth Circuit Court decisions. *See* Canon 3(A)(6). If I am confirmed, I will apply all binding precedent from the United States Supreme Court and the Ninth Circuit.

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

Response: My understanding of 18 U.S.C. § 1507 is consistent with the plain meaning of the text, which 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."

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

Response: I am not aware of a Supreme Court or Ninth Circuit decision that has determined whether 18 U.S.C. §1507 is constitutional. In *Cox v. Louisiana*, 379 U.S. 559

(1965), the Supreme Court upheld the constitutionality of a similarly worded state statute. As a sitting state court judge and a federal district court judicial nominee, I am precluded from offering an opinion on issues pending in any court or that may otherwise come before me. *See* Canon 3(A)(6). If confirmed, I will apply all binding precedent from the United States Supreme Court and the Ninth Circuit, including precedent that applies to the interpretation of 18 U.S.C. § 1507.

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

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

Response: Yes. As a sitting state court judge and a federal district court judicial nominee, I am generally precluded from offering an opinion on issues pending in any court or that may come before me, or otherwise commenting on the correctness of Supreme Court precedent. However, because racial segregation in public schools is an issue that is highly unlikely to be relitigated in the United States, I believe this is a limited instance where I may state my personal view, which is that *Brown v. Board of Education* was correctly decided.

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

Response: Yes. As a sitting state court judge and a federal district court judicial nominee, I am generally precluded from offering an opinion on issues pending in any court or that may come before me, or otherwise commenting on the correctness of Supreme Court precedent. However, because anti-miscegenation laws are highly unlikely to be relitigated in the United States, I believe this is a limited instance where I may state my personal view, which is that *Loving v. Virginia* was correctly decided.

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

Response: As a sitting state court judge and a federal district court judicial nominee, I am generally precluded from offering an opinion on issues pending in any court or that may come before me, or otherwise commenting on the correctness of Supreme Court precedent. If confirmed as a district judge, I will apply all binding precedent of the Supreme Court, including *Griswold v. Connecticut*.

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

Response: As a sitting state court judge and a federal district court judicial nominee, I am generally precluded from offering an opinion on issues pending in any court or that may come before me, or otherwise commenting on the correctness of Supreme Court precedent. *Roe v. Wade* was overruled by *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022). If confirmed as a

district judge, I will apply all binding precedent of the Supreme Court, including *Dobbs v. Jackson Women's Health Org*.

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

Response: As a sitting state court judge and a federal district court judicial nominee, I am generally precluded from offering an opinion on issues pending in any court or that may come before me, or otherwise commenting on the correctness of Supreme Court precedent. *Planned Parenthood v. Casey* was overruled by *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022). If confirmed as a district judge, I will apply all binding precedent of the Supreme Court, including *Dobbs v. Jackson Women's Health Org*.

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

Response: As a sitting state court judge and a federal district court judicial nominee, I am generally precluded from offering an opinion on issues pending in any court or that may come before me, or otherwise commenting on the correctness of Supreme Court precedent. If confirmed as a district judge, I will apply all binding precedent of the Supreme Court, including *Gonzales v. Carhart*.

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

Response: As a sitting state court judge and a federal district court judicial nominee, I am generally precluded from offering an opinion on issues pending in any court or that may come before me, or otherwise commenting on the correctness of Supreme Court precedent. If confirmed as a district judge, I will apply all binding precedent of the Supreme Court, including *District of Columbia v. Heller.*

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

Response: As a sitting state court judge and a federal district court judicial nominee, I am generally precluded from offering an opinion on issues pending in any court or that may come before me, or otherwise commenting on the correctness of Supreme Court precedent. If confirmed as a district judge, I will apply all binding precedent of the Supreme Court, including *McDonald v. City of Chicago*.

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

Response: As a sitting state court judge and a federal district court judicial nominee, I am generally precluded from offering an opinion on issues pending in any court or that may come before me, or otherwise commenting on the correctness of Supreme Court precedent. If confirmed as a district judge, I will

apply all binding precedent of the Supreme Court, including *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*.

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

Response: As a sitting state court judge and a federal district court judicial nominee, I am generally precluded from offering an opinion on issues pending in any court or that may come before me, or otherwise commenting on the correctness of Supreme Court precedent. If confirmed as a district judge, I will apply all binding precedent of the Supreme Court, including *New York State Rifle & Pistol Association, Inc. v. Bruen*.

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

Response: As a sitting state court judge and a federal district court judicial nominee, I am generally precluded from offering an opinion on issues pending in any court or that may come before me, or otherwise commenting on the correctness of Supreme Court precedent. If confirmed as a district judge, I will apply all binding precedent of the Supreme Court, including *Dobbs v. Jackson Women's Health*.

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 sitting state court judge and a federal district court judicial nominee, I am generally precluded from offering an opinion on issues pending in any court or that may come before me, or otherwise commenting on the correctness of Supreme Court precedent. If confirmed as a district judge, I will apply all binding precedent of the Supreme Court, including *Students for Fair Admissions v. President & Fellows of Harvard College* and *Students for Fair Admissions, Inc. v. University of North Carolina*.

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

Response: As a sitting state court judge and a federal district court judicial nominee, I am generally precluded from offering an opinion on issues pending in any court or that may come before me, or otherwise commenting on the correctness of Supreme Court precedent. If confirmed as a district judge, I will apply all binding precedent of the Supreme Court, including *303 Creative LLC v. Elenis*.

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

Response: I would apply the legal standard the Supreme Court set in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022). The Court stated that, "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.'" *Id.* at 17 (quoting *Konigsberg v. State Bar of Cal.*, 366 U.S. 36, 50 (1961)).

45. 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?

Response: No.

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

Response: No.

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

Response: No.

46. 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?

Response: No.

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?

Response: No.

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: No.

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

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

Response: No.

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.

Response: Not applicable.

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?

Response: No.

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.

Response: Not applicable.

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?

Response: No.

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: Not applicable.

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

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

Response: No.

b. Are you currently in contact with anyone associated with the Open Society Foundations, including but not limited to: George Soros, Alexander Soros, Mark Malloch-Brown, and/or Binaifer Nowrojee?

Response: No.

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?

Response: No.

d. Have you ever received any funding, or participated in any fellowship or similar program affiliated with the Open Society network?

Response: No.

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

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

Response: No.

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

Response: No.

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: No.

50. 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?**

Response: No.

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?**

Response: No.

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?**

Response: No.

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: No.

51. 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?

Response: No.

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?

Response: No.

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: No.

52. 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?

Response: No.

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

Response: No.

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: No.

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

Response: On January 10, 2021, I submitted my application for the United States District Court for the Northern District of California to Senator Dianne Feinstein. When Senator Alex Padilla was sworn in to replace then-Senator Harris, I also submitted my application materials to his office. In late January 2021, my application was reviewed by Senator Feinstein's Judicial Advisory Committee for the Northern District of California. In March 2021, I was interviewed by Senator Feinstein's Judicial Appointments Chair. In March 2023, I was interviewed by Senator Padilla's Judicial Commission for the Northern District of California. On December 19, 2023, I was interviewed by Senator Laphonza Butler's Chief Counsel. On April 19, 2024, I was interviewed by Senator Butler. On April 22, 2024, an attorney from the White House Counsel's Office advised me that I was being considered for an opening on the Northern District of California. On April 23, 2024, I interviewed with attorneys from the White House Counsel's Office. Since May 1, 2024, I have been in contact with officials from the Office of Legal Policy at the United States Department of Justice. On June 12, 2024, the President announced his intent to nominate me, and on June 13, 2024, my nomination was submitted to the Senate.

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

Response: No.

55. 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: No.

56. 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: No.

57. 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: No.

58. 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: No.

59. 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: No.

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

Response: No.

61. 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: Yes. While preparing my responses to the Senate Judicial Questionnaire, I sought and received advice from attorneys in the Office of Legal Policy at the Department of Justice to ensure that the cases I selected reflected the depth and breadth of my legal career. The selection of all cases included in the SJQ was entirely my decision.

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

Response: I was interviewed by attorneys from the White House Counsel's Office on April 23, 2024. Since then, I have been in contact with attorneys from the Office of Legal Policy at the Department of Justice and the White House Counsel's Office regarding my nomination and the confirmation process.

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

Response: I received the Questions for the Record from the Office of Legal Policy at the Department of Justice on July 17, 2024. I reviewed the questions, conducted legal and other research, reviewed my SJQ, and prepared my responses. I submitted my draft answers to the Office of Legal Policy. I received limited feedback and finalized my answers for submission.

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

Questions for the Record for Noël Wise, nominated to serve as United States District Judge for the Northern District of California

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: Yes.

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: As a sitting state court judge and a federal district court judicial nominee, I am generally precluded from offering an opinion on issues pending in any court or that may come before me. *See* Canon 3(A)(6). If I am confirmed, I will apply all Supreme Court and Ninth Circuit binding precedent, including precedent related to any rights not otherwise enumerated in the Constitution. *See Dobbs v. Jackson Women's Health Org*., 597 U.S. 215, 231 (2022) (holding that in assessing a potential right, a court should examine whether the right is "'deeply rooted in this Nation's history and tradition' and 'implicit in the concept of ordered liberty.' *Washington v. Glucksberg*, 521 U.S 702, 721 (1997) (internal quotation marks omitted)").

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: My judicial philosophy is to: fully and faithfully apply the law in every case, regardless of whether it comports with my personal views; follow both the letter and the spirit of the judicial canons; consider only the facts in the case before me and apply the law without fear or favor; ensure that each litigant is treated fairly, impartially, and respectfully; explain what I am doing, particularly when dealing with self-represented litigants; timely issue clear, concise, accurate, well-researched and reasoned orders; efficiently move cases through bench trial, jury trial, or judgment; never use my role to diminish anyone's dignity; strive to ensure that every aspect of our judicial system is in fact just; and continue to learn from mentors and be a mentor to others. I have not studied the philosophies of all the Justices on the Warren, Burger, Rehnquist, and Roberts Courts thoroughly enough to thoughtfully respond as to which of those Justice's philosophies is most analogous with mine.

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

Response: "Originalism" is defined in Black's Law Dictionary as "[t]he doctrine that words of a legal instrument are to be given the meanings they had when they were adopted." Black's Law Dictionary (12th ed. 2024). The Supreme Court has taken an originalist approach in interpreting certain constitutional provisions, including the Second Amendment. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008). *See also N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 3 (2022) (stating that the

"Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated, even though its meaning is fixed according to the understandings of those who ratified it."). The Supreme Court has similarly held that the text and original meaning of other constitutional provisions play an important role when courts interpret the Constitution. *See, e.g., United States v. Jones*, 565 U.S. 400 (2012) (Fourth Amendment); *Crawford v. Washington*, 541 U.S. 36 (2004) (Sixth Amendment). If confirmed, I will apply all Supreme Court and Ninth Circuit binding precedent, including precedent regarding the appropriate methods for interpreting the Constitution.

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

Response: "Living Constitutionalism" is defined in Black's Law Dictionary 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 (12th ed. 2024). In *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 3 (2022), the Supreme Court stated that the "Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated, even though its meaning is fixed according to the understandings of those who ratified it." I am not aware of any Supreme Court case that directs lower courts to use "living constitutionalism" as an interpretive method. If confirmed, I will apply all Supreme Court and Ninth Circuit binding precedent, including precedent regarding the appropriate methods for interpreting the Constitution.

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: In the unlikely scenario in which I am presented with a constitutional issue of first impression – that is, an issue for which no binding precedent applies, my analysis would begin with the plain language of the provision, and would stop there if the meaning is clear. *See Bostock v. Clayton County*, 590 U.S. 644, 654 (2020) (stating "This Court normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment.").

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: In *Bostock v. Clayton County*, 590 U.S. 644, 654 (2020), the Supreme Court stated: "This Court normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment." The Supreme Court has indicated that the public's "current understanding" is relevant in certain contexts, including when a statute references "contemporary community standards," for example in the Communications Decency Act of 1996, 47 U.S.C. §§ 223 *et seq*. *See, e.g., Ashcroft v. ACLU*, 535 U.S. 564, 567 (2002). If confirmed, I will apply all Supreme Court and Ninth

Circuit binding precedent, including precedent regarding the appropriate methods, and relevant considerations, for interpreting the Constitution or a statute.

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

Response: No. In *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 3 (2022), the Supreme Court stated that the "Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated, even though its meaning is fixed according to the understandings of those who ratified it."

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

Response: The Supreme Court's ruling in *Dobb*s *v. Jackson Women's Health Org.*, 597 U.S. 215 (2022), is binding precedent. If confirmed as a district judge, I will apply all binding precedent of the Supreme Court, including *Dobbs v. Jackson Women's Health Organization.*

a. Was it correctly decided?

Response: As a sitting state court judge and a federal district court judicial nominee, I am generally precluded from offering an opinion on issues pending in any court or that may come before me, or otherwise commenting on the correctness of Supreme Court precedent. If confirmed as a district judge, I will apply all binding precedent of the Supreme Court, including *Dobbs v. Jackson Women's Health Organization*.

10. Is the Supreme Court's ruling in *Cooper v. Aaron* settled law?

Response: The Supreme Court's ruling in *Cooper v. Aaron,* 358 U.S. 1 (1958), is binding precedent. If confirmed as a district judge, I will apply all binding precedent of the Supreme Court, including *Cooper v. Aaron.*

a. Was it correctly decided?

Response: As a sitting state court judge and a federal district court judicial nominee, I am generally precluded from offering an opinion on issues pending in any court or that may come before me, or otherwise commenting on the correctness of Supreme Court precedent. If confirmed as a district judge, I will apply all binding precedent of the Supreme Court, including *Cooper v. Aaron*.

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

Response: The Supreme Court's ruling in *New York Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022), is binding precedent. If confirmed as a district judge, I will apply all

binding precedent of the Supreme Court, including *New York Rifle & Pistol Ass'n, Inc. v. Bruen*.

a. Was it correctly decided?

Response: As a sitting state court judge and a federal district court judicial nominee, I am generally precluded from offering an opinion on issues pending in any court or that may come before me, or otherwise commenting on the correctness of Supreme Court precedent. If confirmed as a district judge, I will apply all binding precedent of the Supreme Court, including *New York Rifle & Pistol Ass'n, Inc. v. Bruen*.

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

Response: The Supreme Court's ruling in *Brown v. Board of Education*, 347 U.S. 483 (1954), is binding precedent. If confirmed as a district judge, I will apply all binding precedent of the Supreme Court, including *Brown v. Board of Education*.

a. Was it correctly decided?

Response: As a sitting state court judge and a federal district court judicial nominee, I am generally precluded from offering an opinion on issues pending in any court or that may come before me, or otherwise commenting on the correctness of Supreme Court precedent. However, because racial segregation in public schools is an issue that is highly unlikely to be relitigated in the United States, I believe this is a limited instance where I may state my personal view, which is that *Brown v. Board of Education* was correctly decided.

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

Response: The Supreme Court's ruling in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College,* 600 U.S. 181 (2023), is binding precedent. If confirmed as a district judge, I will apply all binding precedent of the Supreme Court, including *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*.

a. Was it correctly decided?

Response: As a sitting state court judge and a federal district court judicial nominee, I am generally precluded from offering an opinion on issues pending in any court or that may come before me, or otherwise commenting on the correctness of Supreme Court precedent. If confirmed as a district judge, I will apply all binding precedent of the Supreme Court, including *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*.

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

Response: The Supreme Court's ruling in *Gibbons v. Ogden*, 22 U.S. 1 (1824), is

binding precedent. If confirmed as a district judge, I will apply all binding precedent of the Supreme Court, including *Gibbons v. Ogden*.

a. Was it correctly decided?

Response: As a sitting state court judge and a federal district court judicial nominee, I am generally precluded from offering an opinion on issues pending in any court or that may come before me, or otherwise commenting on the correctness of Supreme Court precedent. If confirmed as a district judge, I will apply all binding precedent of the Supreme Court, including *Gibbons v. Ogden*.

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

Response: Pursuant to 18 U.S.C. § 3142(e)(1), "If, after a hearing . . . the judicial officer finds that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community, such judicial officer shall order the detention of the person before trial." There is a "rebuttable presumption" in favor of pretrial detention when a person has been charged with an offense listed in 18 U.S.C. § 3142(e)(2)-(3), which include drug trafficking, firearms, terrorism, slavery or human trafficking, certain crimes involving minor victims, as well as cases involving certain repeat offenders.

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

Response: I am not aware of any Ninth Circuit or Supreme Court precedent that specifically describes the underlying policy rationales for the rebuttable presumption in favor of pretrial detention in the Bail Reform Act, but the plain language of 18 U.S.C. § 3142(e)(1) states that "no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community."

16. 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. The First Amendment states, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . ." In numerous cases, particularly over the last decade, the Supreme Court has limited government regulations that were applied to private institutions or small businesses, finding that the regulations violated the Free Exercise Clause. *See, e.g., 303 Creative LLC v. Elenis*, 600 U.S. 570 (2023) (creation of a custom wedding website for same-sex couples); *Burwell v. Hobby Lobby*, 573 U.S. 682 (2014) (insurance coverage that includes contraception).

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

Response: Under the Free Exercise Clause of the First Amendment, it is impermissible for the government to discriminate against a religious organization or religious people by treating secular activity more favorably than non-secular activity. *See Tandon v. Newsom*, 593 U.S. 61 (2021).

18. 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 v. Cuomo*, 592 U.S. 14 (2020), the Supreme Court enjoined the enforcement of an executive order issued by the Governor of New York during COVID. The order imposed severe attendance restrictions at religious services held in areas classified as "red" or "orange" zones during the pandemic. *Id*. at 16. The Court held plaintiffs were likely to succeed on the merits because the COVID restrictions did not survive strict scrutiny; the restrictions treated secular entities more favorably than religious ones; denial of the injunction would lead to irreparable injury; and the restrictions imposed more severe limitations than necessary to prevent the spread of COVID. *Id.* at 16-17.

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

Response: In *Tandon v. Newsom*, 593 U.S. 61, 62-65 (2021), the Supreme Court held that certain government restrictions imposed during COVID did not satisfy strict scrutiny because California treated comparable secular activities more favorably than religious activities, and the government failed to show that "public health would be imperiled" by employing less restrictive measures. *Id.* at 64.

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

Response: Yes. In *Kennedy v. Bremerton School District*, 597 U.S. 507 (2022), the Supreme Court held "The [Free Exercise] Clause protects not only the right to harbor religious beliefs inwardly and secretly. It does perhaps its most important work by protecting the ability of those who hold religious beliefs of all kinds to live out their faiths in daily life through 'the performance of (or abstention from) physical acts.'" 597 U.S. 507, 524 (2022) (quoting *Employment Div., Dept. of Human Resources of Ore. v. Smith*, 494 U.S. 872, 877 (1990)).

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

Response: In *Masterpiece Cakeshop, Ltd., v. Colorado Civil Rights Commission*, 584 U.S. 617 (2018), the Supreme Court held that an order issued by the Colorado Civil Rights Commission, which required a baker to make a wedding cake for a same-sex couple in contravention of the baker's sincerely held religious beliefs, was a violation of the Free Exercise Clause of the First Amendment.

22. 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: Yes. If a person has a sincerely held religious belief, even when that belief does not correspond to the tenets of a particular religious denomination, that belief is protected by the Free Exercise Clause of the First Amendment. *See Frazee v. Ill. Dep't of Employment Security Div.*, 489 U.S. 829, 834 (1989) ("[W]e reject the notion that to claim the protection of the Free Exercise Clause, one must be responding to the commands of a particular religious organization. Here, Frazee's refusal was based on a sincerely held religious belief. Under our cases, he was entitled to invoke First Amendment protection.")

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

Response: In *Burwell v. Hobby Lobby Stores, Inc*., 573 U.S. 682 (2014), the Supreme Court stated, "it is not for us to say that their religious beliefs are mistaken or insubstantial. Instead, our 'narrow function . . . in this context is to determine' whether the line drawn reflects 'an honest conviction . . . .'" *Id.* at 725 (quoting *Thomas v. Review Bd. of Ind. Employment Security Div*., 450 U.S. 707, 716 (1981)).

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

Response: In *Burwell v. Hobby Lobby Stores, Inc*., 573 U.S. 682, 725 (2014), the Supreme Court stated, "it is not for us to say that their religious beliefs are mistaken or insubstantial. Instead, our 'narrow function . . . in this context is to determine' whether the line drawn reflects 'an honest conviction . . . .'" *Id.* at 725 (quoting *Thomas v. Review Bd. of Ind. Employment Security Div*., 450 U.S. 707, 716 (1981)).

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

Response: I am not familiar with the official position of the Catholic Church, nor am I familiar with any Ninth Circuit or Supreme Court binding precedent that sets forth the official position of the Catholic Church.

23. 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*, 591 U.S. 732 (2020), the Supreme Court held that the "ministerial exception" under the First Amendment Free Exercise and Establishment Clauses precluded courts from adjudicating the employment-discrimination claims involving teachers at religious schools. *Id.* at 737. The Court explained, "The religious education and formation of students is the very reason for the existence of most private religious schools, and therefore the selection and supervision of the teachers upon whom the schools rely to do this work lie at the core of their mission. Judicial review of the way in which religious schools discharge those responsibilities would undermine the independence of religious institutions in a way that the First Amendment does not tolerate." *Id.* at 738.

24. 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: Applying strict scrutiny, the Supreme Court held in *Fulton v. City of Philadelphia*, 593 U.S. 522 (2021), that Philadelphia's asserted interests in maximizing the number of parents available for foster children, protecting the City from liability, and ensuring equal treatment, were insufficient to justify denying an accommodation that would allow Catholic Social Services (CSS) to continue serving foster children consistent with its religious beliefs. The Court found that the City's policy violated the First Amendment's Free Exercise Clause, including because that the City had permitted certain discretionary exceptions, and the City failed to meet its burden to show that it had a compelling interest in denying a discretionary exception to CSS. *Id.* at 541-42.

25. 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: In *Carson v. Makin*, 596 U.S. 767 (2022), the Supreme Court held that Maine's tuition assistance program, which limited state payments to "nonsectarian" schools, violated the Free Exercise Clause. Citing its recent holdings, including in *Espinoza v. Montana Dep't of Revenue*, 591 U.S. 464 (2020), the Court stated, "There, as here, we considered a state benefit program under which public funds flowed to support tuition payments at private schools. And there, as here, that program specifically carved out private religious schools from those eligible to receive such funds. While the wording of the Montana and Maine provisions is different, their effect is the same: to 'disqualify some private schools' from funding 'solely because they are religious.' A law that operates in that manner, we held in *Espinoza*, must be subjected to 'the strictest scrutiny.' To satisfy strict scrutiny, government action 'must advance "interests of the highest order"

and must be narrowly tailored in pursuit of those interests.' A law that targets religious conduct for distinctive treatment . . . will survive strict scrutiny only in rare cases." *Id.* at 780-81 (internal citations omitted).

26. 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 (2022), the Supreme Court applied strict scrutiny and held that a school district's decision to issue disciplinary action against a football coach, who gave "thanks through prayer on the playing field" at the conclusion of each game, violated the First Amendment's Free Speech and Free Exercise Clauses. *Id.* at 514. Noting that the district permitted various other types of secular speech after games, the Court found that the district's policies were neither neutral nor generally applicable, and the district's interest in avoiding an Establishment Clause violation did not justify its infringements on Mr. Kennedy's First Amendment rights. *Id.* at 514-25.

27. 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: In *Mast v. Fillmore County*, 141 S. Ct. 2430 (2021), the Supreme Court vacated the judgment of a Minnesota court, which rejected a claim of an Amish community that sought relief from a Fillmore County ordinance. Pursuant to the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), the community challenged the County's refusal to grant an exception to a gray water disposal ordinance. Justice Gorsuch issued a separate concurrence noting that, "The Swartzentruber Amish are religiously committed to living separately from the modern world. Maintaining that commitment is not easy. They grow their own food, tend their farms using pre-industrial equipment, and make their own clothes. In short, they lead lives of faith and self-reliance that have 'not altered in fundamentals for centuries.'" *Id.* (quoting *Wisconsin v. Yoder*, 406 U.S. 205, 216–217 (1972)). Justice Gorsuch explained that the County's refusal to grant an exception permitting the Swartzentruber Amish community to dispose of "gray" wastewater in a manner that was consistent with their religious beliefs (using a mulch basin system instead of a modern septic system) failed strict scrutiny under the RLUIPA. He stated that, "In this country, neither the Amish nor anyone else should have to choose between their farms and their faith." *Id.* at 2434.

28. 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: In pertinent part, 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." As a sitting state court judge and a federal district court judicial nominee, beyond acknowledging the applicable law, it is generally not appropriate for me to express an opinion on an issue that may come before me. *See* Canon 3(A)(6). If I am confirmed, I will apply all binding precedent from the United States Supreme Court and the Ninth Circuit, including precedent that relates to the application of 18 U.S.C. § 1507.

29. 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.

30. 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.

31. 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.

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

Is it constitutional?

Response: Article II, Section 2 of the Constitution grants the President the power to appoint "by and with the Advice and Consent of the Senate," "Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other Officers of the United States . . . ." As a sitting state court judge and a federal district court judicial nominee, it is inappropriate for me to offer an opinion on the constitutionality of a political decision. *See* Canon 3(A)(6) and Canon 5.

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

Response: In *Ricci v. DeStefano*, 557 U.S. 557, 577 (2009), the Supreme Court stated, "Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000 et seq., as amended, prohibits employment discrimination on the basis of race, color, religion, sex, or national origin. Title VII prohibits both intentional discrimination (known as "disparate treatment") as well as, in some cases, practices that are not intended to discriminate but in fact have a disproportionately adverse effect on minorities (known as "disparate impact"). *See also Tex. Dep't of Hous. & Cmty. Affs. v. Inclusive Cmtys. Project, Inc.*, 576 U.S. 519, 534 (2015) (holding the Fair Housing Act "encompasses disparate-impact claims"). I am not aware of any Supreme Court or Ninth Circuit precedent that addresses subconscious racial discrimination. If I am confirmed, I will apply all binding precedent from the United States Supreme Court and the Ninth Circuit, including precedent that relates to the application of the Civil Rights Act and the Fourteenth Amendment.

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

Response: The number of justices on the Supreme Court is a question for policymakers. As a sitting state court judge and a federal district court judicial nominee, it is inappropriate for me to offer an opinion on a political decision. See Canon 3(A)(6) and Canon 5. If confirmed, I will apply all binding precedent from the United States Supreme Court irrespective of the number of justices sitting on the Court.

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

Response: No.

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

Response: In numerous cases the Supreme Court has considered the original public meaning of the Second Amendment and has held that the Second Amendment guarantees the right of law-abiding citizens to possess a handgun in the home for self-defense and to public carry for self-defense. *See N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S.

1 (2022); *McDonald v. City of Chicago*, 561 U.S. 742 (2010); *District of Columbia v. Heller*, 554 U.S. 570 (2008). If I am confirmed, I will apply all binding precedent from the United States Supreme Court and the Ninth Circuit, including precedent regarding the Second Amendment.

37. 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: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court held the Second Amendment guarantees a law-abiding individual's right to keep and bear arms, unrelated to whether the individual is serving in the military. *See also McDonald v. City of Chicago*, 561 U.S. 742 (2010) (holding the Second Amendment right to keep and bear arms applies to the states through the Fourteenth Amendment). In *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022), the Supreme Court held that the Second Amendment applies outside the home, and if the government is going to restrict the rights of "law-abiding, responsible citizens" to carry firearms for self-defense, the government has the burden of demonstrating the regulation is consistent with "this Nation's historical tradition of firearm regulation." *Id.* at 33. If I am confirmed, I will apply all binding precedent from the United States Supreme Court and the Ninth Circuit, including precedent regarding the Second Amendment.

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

Response: Yes. *See McDonald v. City of Chicago*, 561 U.S. 742 (2010).

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

Response: No. *See N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 70 (2022) ("The constitutional right to bear arms in public for self-defense is not 'a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.'") (quoting *McDonald v. City of Chicago*, 561 U.S. 742, 780 (2010)).

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

Response: No. *See N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 70 (2022) ("The constitutional right to bear arms in public for self-defense is not 'a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.'") (quoting *McDonald v. City of Chicago*, 561 U.S. 742, 780 (2010)).

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

Response: Article II, Section 3 of the Constitution states that the President "shall take

Care that the Laws be faithfully executed." In *United States v. Texas*, 599 U.S. 670 (2023), the Supreme Court stated, "Under Article II, the Executive Branch possesses authority to decide 'how to prioritize and how aggressively to pursue legal actions against defendants who violate the law.'" *Id.* at 678 (quoting *TransUnion LLC v. Ramirez*, 594 U.S. 413, 429 (2021)). As a sitting state court judge and a federal district court judicial nominee, I am precluded from offering an opinion on issues pending in any court or that may come before me. *See* Canon 3(A)(6). If I am confirmed, I will apply all Supreme Court and Ninth Circuit binding precedent, including precedent related to the scope and application of executive power and discretion under Article II of the Constitution.

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

Response: An act of "prosecutorial discretion" is one in which prosecutors use their "power to choose from the options available in a criminal case, such as filing charges, prosecuting, not prosecuting, plea-bargaining, and recommending a sentence to the court." Black's Law Dictionary (12th ed. 2024). An "administrative rule" is defined as "[a]n officially promulgated agency regulation that has the force of law[,]" and defines administrative "rulemaking" as "[t]he process used by an administrative agency to formulate, amend, or repeal a rule or regulation. *Id.* To change a rule, an agency must comply with the Administrative Procedure Act. *See Perez v. Mortgage Bankers Ass'n*, 575 U.S. 92 (2015).

43. Does the President have the authority to abolish the death penalty?

Response: No. Pursuant to 18 U.S.C. § 3591, Congress has authorized the death penalty for specified criminal offenses. In *Clinton v. City of New York*, 524 U.S. 417, 438 (1998), the Supreme Court held the President cannot unilaterally abolish federal statutes, stating, "There is no provision in the Constitution that authorizes the President to enact, to amend, or to repeal statutes."

44. 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*, 594 U.S. 758 (2021), the Supreme Court vacated an order staying a judgment entered against the Centers for Disease Control and Prevention (CDC). The Court determined the CDC exceeded its delegated authority when it extended a nationwide eviction moratorium during the COVID pandemic that had the potential to impact "80% of the country, including between 6 and 17 million tenants at risk of eviction." *Id.* at 764 (noting that even if the text of the regulation at issue was ambiguous, the magnitude of the CDC's claimed authority would counsel against the regulatory interpretation of the government, because the Court expects Congress to speak clearly when authorizing an agency to exercise power that has "vast 'economic and political significance'") (internal citations omitted).

45. 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: As a sitting state court judge and a federal district court judicial nominee, I am precluded from offering an opinion on issues pending in any court or that may come before me. See Canon 3(A)(6). If I am confirmed, I will follow the law and apply all Supreme Court and Ninth Circuit binding precedent, including precedent that may apply to the issue noted in this question.

46. You wrote the following in a Time Magazine article: *Judge: Gender Laws Are at Odds With Science*: "When legislators blur the lines of church and state and enact laws that permit or prohibit conduct based on biologic gender as only male or female — whether it is for the purpose of authorizing marriage or designating the use of public bathrooms — they place an impossible burden on our judiciary, and ultimately on our country and all of its people." What does this sentence mean?

Response: This segment is an excerpt from a paragraph that discussed the importance of an independent and apolitical judiciary. The thesis of the paragraph, which is consistent with the Establishment Clause of the First Amendment and the Judicial Canons, is set forth in the first two sentences: "In the United States, judges are obligated to see the world through a secular lens. They must apply the law without the influence of any religious construct or political agenda."

47. In what specific instance did legislators enact laws that permit or prohibit conduct based on biologic gender as only male or female and blur the lines of church and state?

Response: Please see my response to Question 46. In addition, the sentence that immediately precedes the one referenced in this question is framed as an "if-then" scenario. The article raises the issue that *if* doctors using modern medical science (including physical observations and chromosomal testing) are unable to definitively determine the sex of some newborns as either male or female, *then whenever* a judge is required to make such a definitive determination regarding those individuals in order to administer the law, the judge is in a challenging position.

48. How does designating the use of public bathrooms for only males and females blur the lines of church and state? Do you still agree with this position?

Response: Please see my responses to Questions 46 and 47.

49. You wrote the following in a Time Magazine article: *Judge: Gender Laws Are at Odds With Science*: "The more we learn about our DNA, the more that biological sex — from the moment of conception — looks like an intricate continuum and less like two tidy boxes." To support this, you cited a study from Denmark analyzing 35,000 newborn children, citing 1 in 426 or 0.2% of them being born without strictly XX or

XY chromosomes in 426, or 0.2%. For 99.8% of people, is biological sex a binary question or does it still look like an intricate continuum?

Response: For most newborns, a doctor is able to accurately determine and document the baby's sex as either male or female. The article was published in 2017 and is now more than seven years old. It cited numerous authorities from the time, including statistics from the World Health Organization, which reported that "1 in every 2,000 births worldwide are visibly intersex, because the child's genitals are either incomplete or ambiguous, which equates to five newborn Americans a day." Although I have not exhaustively researched the current data on this issue, I am aware that there are more recent studies, and academic articles on sex chromosomal abnormalities (including those published with the U.S. National Center for Biotechnology Information) that provide a range of new data, including the wider impacts of these abnormalities such as on procreation, infertility and miscarriage.

50. If a person is born with XX chromosomes, is their sex male or female?

Response: My understanding is that if a baby is born with an XX chromosomal pairing, barring observable physical or other abnormalities, the doctor would designate the sex of the baby as female.

51. How long have you served on the board of the Alameda County chapter of Girls, Inc.?

Response: I began serving on the board of Girls Inc. of Alameda County in 2014. I am no longer on the board because my term ended in June 2024.

52. How much money did you approximately donate to the Alameda County chapter of Girls, Inc.?

Response: I believe I began making charitable donations to Girls, Inc. of Alameda County approximately 12 years ago when I learned about its mission to promote literacy for underserved girls in early elementary school in inner city Oakland. As a former high school English teacher, I am deeply committed to improving literacy, particularly for disadvantaged youth. I no longer have records for all the donations I made, but my best recollection is that I donated about $3,000 each year. I have never donated to the national organization.

53. According to the main page of its website, Girls, Inc. of Alameda County redefines the meaning of "girl" as follows: "'Girls' refers to gender-expansive youth (cis girls, trans girls, non-binary youth, gender non-conforming youth, gender queer youth, and any girl-identified youth)." Do you agree with this definition?

Response: I have never seen nor heard this language at Girls Inc. of Alameda County. I do not have an opinion about this definition. The Merriam-Webster Dictionary (2nd ed. rev. 2000) defines girl as "a female child from birth to full growth."

54. In practice, under your organization's definition of a girl, can anyone declare to be a girl and participate in your organization's programming?

Response: Please see my response to Question 53.