

Senator Lindsey Graham, Ranking Member
Questions for the Record
Byron B. Conway

Nominee to be United States District Judge for the Eastern District of Wisconsin

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

Response: Yes.

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

Response: No.

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

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

Response: No.

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

Response: No.

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

Response: No. The United States Constitution is a sovereign document and the supreme law of the land. Foreign law should not be considered in constitutional interpretation.

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

Response: Judgments about the Constitution should be based on precedent. They should not be made based on the personal values of a judge.

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

Response: Yes.

8. **Please define the term “prosecutorial discretion.”**

Response: Prosecutorial discretion refers to a prosecutor’s authority to determine whether to bring criminal charges and if charges are brought, to determine the nature of those charges.

9. **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.

10. **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.

11. **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.

12. **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: Under 28 U.S.C. § 2255, 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.

13. **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: *Students for Fair Admissions, Inc. v. University of North Carolina*, involved a claim that the use of race as a factor in the University of North Carolina's admissions process violated the Equal Protection Clause of the Fourteenth Amendment. The plaintiff argued that the University's admissions policy gave preferential treatment to certain racial groups to the detriment of other racial groups. The Court applied strict scrutiny. The Court's decision in favor of the plaintiff was based on the University's failure to show that race-neutral alternatives were not available or not adequate to achieve the diversity goals.

Students for Fair Admissions Inc. v. President & Fellows of Harvard College, involved a claim that Harvard's admissions process, which considered race as a factor, violated Title VI of the Civil Rights Act of 1964. The Court applied strict scrutiny. The Court held that the admissions policy at issue was not narrowly tailored to achieve the stated diversity interest.

14. **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: In my current role as a lawyer at Habush Habush & Rottier, I have been involved in interviewing and hiring candidates for legal assistant and paralegal positions.

15. **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.

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

Response: No.

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

Response: No.

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

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

Response: Yes.

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

Response: *303 Creative LLC v. Elenis* involved a challenge to Colorado's Anti-Discrimination Act (CADA). A website designer, Lorie Smith, challenged CADA. Smith argued that being compelled to design websites for same sex couples under CADA violated her First Amendment right to free speech. The Court ruled that Smith could not be compelled under CADA to create content that conflicted with her values.

20. **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. This is Supreme Court precedent.

21. **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 follow Supreme Court and Seventh Circuit precedent to determine whether a law is content-based or content-neutral. Generally, a law that regulates speech is content-based if the purpose of a law is to regulate the message being conveyed. If the purpose of the law is not related to the content it is likely to be content-neutral. *See Reed v. Town of Gilbert*, 576 U.S. 155 (2015).

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

Response: Under the true threats doctrine, a statement is considered a true threat and is not protected by the First Amendment if the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence. *See Counterman v. Colorado*, 600 U.S. 66, 74 (2023).

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

Response: A fact generally refers to objects involved in a legal case such as who did what, when, where, and how. A question of law involves the application of legal principles to facts. Others have defined questions of law as those that deal with the general body of legal principles; questions of fact deal with “all other phenomena.” Ronald R. Hofer, *Standards of Review - Looking Beyond the Labels*, 74 Marq. L. Rev. 231, 235 (1991). The difference between fact and law has been characterized as that between “ought” questions and “is” questions, or between policy and empirical questions. *Id.* That said, the Supreme Court has acknowledged that “the appropriate methodology for distinguishing questions of fact from questions of law has been, to say the least, elusive.” *Miller v. Fenton*, 474 U.S. 104, 113 (1985). If I am fortunate to be confirmed, I would research and apply Supreme Court and Seventh Circuit precedent on this issue.

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

Response: 18 U.S.C. § 3553(a)(2) does not indicate that any of the primary purposes of sentencing should be given the most consideration. If confirmed, I will follow the Supreme Court and Seventh Circuit precedents in considering the primary purposes of sentencing.

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

Response: As a nominee to the Federal District Court, I am prohibited from commenting on whether a Supreme Court decision was “well-reasoned.”

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

Response: As a nominee to the Federal District Court, I am prohibited from commenting on whether a Seventh Circuit decision was “well-reasoned.”

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

Response: 18 U.S.C. § 1507 states: “Whoever, with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty, pickets or parades in or near a building housing a court of the United States, or in or near a building or residence occupied or used by such judge, juror, witness, or court officer, or with such intent uses any sound-truck or similar device or resorts to any other demonstration in or near any such building or residence, shall be fined under this title or imprisoned not more than one year, or both. Nothing in this section shall interfere with or prevent the exercise by any court of the United States of its power to punish for contempt.”

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

Response: I am unaware of any Supreme Court decision addressing the constitutionality of 18 U.S.C. § 1507. A similarly worded state statute was upheld by the Supreme Court in *Cox v. Louisiana*, 379 U.S. 559 (1965).

29. 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 nominee to the Federal District Court, I would normally be prohibited from commenting on whether an opinion of the Supreme Court was “correctly decided.” However, the issue of de jure segregation is not likely to be relitigated. I believe it was correctly decided.

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

Response: Yes. As a nominee to the Federal District Court, I would normally be prohibited from commenting on whether an opinion of the Supreme Court was “correctly decided.” However, the issue of interracial marriage is not likely to be relitigated. I believe it was correctly decided.

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

Response: As a nominee to the Federal District Court, I am prohibited from expressing my personal beliefs or commenting on whether an opinion of the Supreme Court was “correctly decided.” The decision in *Griswold v. Connecticut* is binding precedent and, if confirmed as a District Judge, I will apply the decision fully and faithfully.

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

Response: As a nominee to the Federal District Court, I am prohibited from expressing my personal beliefs or commenting on whether an opinion of the Supreme Court was “correctly decided.” The Supreme Court overturned *Roe v. Wade* in *Dobbs v. Jackson Women’s Health Organization*, 597 U.S. 215 (2022). The decision in *Dobbs* is binding precedent and, if confirmed as a District Judge, I will apply the decision fully and faithfully.

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

Response: As a nominee to the Federal District Court, I am prohibited from expressing my personal beliefs or commenting on whether an opinion of the Supreme Court was “correctly decided.” The Supreme Court overturned *Roe v. Wade* and its progeny, including *Planned Parenthood v. Casey*, in *Dobbs v. Jackson Women’s Health Organization*. The decision in *Dobbs* is binding precedent and, if confirmed as a District Judge, I will apply the decision fully and faithfully.

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

Response: As a nominee to the Federal District Court, I am prohibited from expressing my personal beliefs or commenting on whether an opinion of the Supreme Court was “correctly decided.” The decision in *Gonzales v. Carhart* is binding precedent and, if confirmed as a District Judge, I will apply the decision fully and faithfully.

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

Response: As a nominee to the Federal District Court, I am prohibited from expressing my personal beliefs or commenting on whether an opinion of the Supreme Court was “correctly decided.” The decision in *District of Columbia v. Heller* is binding precedent and, if confirmed as a District Judge, I will apply the decision fully and faithfully.

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

Response: As a nominee to the Federal District Court, I am prohibited from expressing my personal beliefs or commenting on whether an opinion of the Supreme Court was “correctly decided.” The decision in *McDonald v. City of Chicago* is binding precedent and, if confirmed as a District Judge, I will apply the decision fully and faithfully.

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

Response: As a nominee to the Federal District Court, I am prohibited from expressing my personal beliefs or commenting on whether an opinion of the Supreme Court was “correctly decided.” The decision in *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* is binding precedent and, if confirmed as a District Judge, I will apply the decision fully and faithfully.

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

Response: As a nominee to the Federal District Court, I am prohibited from expressing my personal beliefs or commenting on whether an opinion of the Supreme Court was “correctly decided.” The decision in *New York State Rifle & Pistol Association v. Bruen* is binding precedent and, if confirmed as a District Judge, I will apply the decision fully and faithfully.

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

Response: As a nominee to the Federal District Court, I am prohibited from expressing my personal beliefs or commenting on whether an opinion of the Supreme Court was “correctly decided.” The decision in *Dobbs v. Jackson Women’s Health* is binding precedent and, if confirmed as a District Judge, I will apply the decision fully and faithfully.

- l. **Were *Students for Fair Admissions, Inc. v. University of North Carolina and Students for Fair Admissions Inc. v. President & Fellows of Harvard College* correctly decided?**

Response: As a nominee to the Federal District Court, I am prohibited from expressing my personal beliefs or commenting on whether an opinion of the Supreme Court was “correctly decided.” The decisions in *Students for Fair Admissions, Inc. v. University of North Carolina* and *Students for Fair Admissions Inc. v. President & Fellows of Harvard College* are binding precedent and, if confirmed as a District Judge, I will apply the decision fully and faithfully.

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

Response: As a nominee to the Federal District Court, I am prohibited from expressing my personal beliefs or commenting on whether an opinion of the

Supreme Court was “correctly decided.” The decision in *303 Creative LLC v. Elenis* is binding precedent and, if confirmed as a District Judge, I will apply the decision fully and faithfully.

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

Response: If confirmed, I would follow the precedent of *New York State Rifle & Pistol Association v. Bruen*, which holds that 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.

31. Demand Justice is a progressive organization dedicated to “restor[ing] ideological balance and legitimacy to our nation’s courts.”

- a. **Has anyone associated with Demand Justice, including Brian Fallon, Christopher Kang, Tamara Brummer, Jen Dansereau, and/or Becky Bond, requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

b.

Response: No.

- c. **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.

- d. **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.

32. 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.

33. **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.**

- 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.**

- 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.**

34. 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.

35. 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.

36. **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?**

37. **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.

38. 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.

39. 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 or about April 28, 2023, I submitted an application to the Bipartisan Wisconsin Federal Nominating Commission that was established by U.S. Senators Ron Johnson and Tammy Baldwin. I interviewed with the six members of the Commission on June 5, 2023. On June 8, 2023, Senator Baldwin’s office informed me that the Commission had recommended me as a candidate for nomination to Senators Johnson and Baldwin. That day I received a copy of a letter from Senators Johnson and Baldwin

to President Biden in which the Senators jointly recommended me as a candidate to fill the vacancy on the U.S. District Court for the Eastern District of Wisconsin.

On June 8, 2023, I spoke with attorneys from the White House Counsel's office. On May 17, 2024, I spoke with attorneys from the White House Counsel's office. On May 30, 2024, the White House Counsel's office informed me that I would be moving forward in the selection process. Since then, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On July 3, 2024, the President announced his intent to nominate me.

On July 31, 2024, I testified before the Senate Judiciary Committee.

- 40. 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.

- 41. 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.

- 42. 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.

- 43. 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.

- 44. 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.

- 45. 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.

- 46. 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.

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

Response: No.

- a. **If yes,**
i. **Who?**

Response: Not applicable.

- ii. **What advice did they give?**

Response: Not applicable.

- iii. **Did they suggest that you omit or include any particular case or type of case in your questionnaire?**

Response: Not applicable.

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

Response: I interviewed with attorneys from the White House Counsel's Office on June 3, 2023, and on May 30, 2024. Since then, I have had numerous communications on many dates with officials from the Office of Legal Policy at the Department of Justice and the White House Counsel's Office.

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

Response: I received these questions from the Department of Justice, Office of Legal Policy (OLP) on August 7, 2024. Upon receipt, I reviewed the questions, drafted responses and forwarded them to the OLP. I then made minor edits, finalized the responses, and forwarded the final responses to the OLP.

**Senate Judiciary Committee
Nominations Hearing
July 31, 2024
Questions for the Record
Senator Amy Klobuchar**

For Byron Conway, nominee to be U.S. District Judge for the Eastern District of Wisconsin
You have spent your entire legal career in private practice, first as a criminal defense lawyer, and for the past 17 years as a civil litigator. In that time, you have appeared before state courts and federal courts, and have tried 20 jury trials.

- **Can you describe your work in private practice and how that has prepared you to serve as a federal district court judge?**

Response: From 2002 to 2006, I was an associate at Gimbel Reilly Guerin & Brown LLP. I handled a wide variety of cases, including the following: misdemeanor and felony criminal matters, including, drug offenses, battery, burglary, white collar crimes, municipal law cases ranging from zoning and license applications to ordinance violations, employment law, immigration law, and a broad range of civil litigation.

From December of 2006 to the present, I have been employed at Habush Habush & Rottier S.C. I began with the firm as an associate. I became a shareholder in 2010. My practice at Habush Habush & Rottier S.C. has been devoted primarily to civil litigation, the majority of which has involved personal injury claims. I have worked on cases involving, among other things: explosions, environmental contamination, product defects, workplace accidents, motor vehicle accidents, nursing home neglect, premises liability, and insurance coverage disputes.

I have tried both criminal and civil cases during my career. I believe that trial experience is crucial for a judge. My personal trial experience has taught me the importance of fairness, impartiality, and the careful consideration of evidence, all of which are critical qualities for a federal district court judge. Further, my experience as a trial lawyer has provided me with an appreciation for the time, expense and efforts put in by the lawyers who will appear before me. I am confident that these experiences have prepared me to approach each case with the balanced perspective and dedication required to perform the duties of a federal district court judge.

Senator Hirono Questions for the Record for the July 31, 2024, Hearing in the Senate Judiciary Committee entitled “Nominations.”

QUESTIONS FOR BYRON BROWNING CONWAY

Sexual Harassment

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

QUESTIONS:

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

Response: No.

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

Response: No.

Senator Mike Lee
Questions for the Record
Byron B. Conway to be United States District Judge for the Eastern District of Wisconsin

1. How would you describe your judicial philosophy?

Response: My judicial philosophy starts with adhering to the oath taken by a Federal Judge if they are fortunate to be confirmed. In taking the oath, a judge swears to “administer justice without respect to persons, and to do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform the duties incumbent upon me under the Constitution and the laws of the United States. So help me God.”

I would pair adherence to the oath with a focus on Rule 1 of the Federal Rules of Civil Procedure and its criminal counterpart. Fed R. Civ. P. 1 instructs that all of the other rules “should be construed, administered, and employed by the Court and the parties, to secure the just, speedy, and inexpensive determination of every action and proceeding.”

Adherence to the oath and administering the Federal Rules of Civil and Criminal Procedure as directed are the principles that will guide my judicial philosophy.

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

Response: If confirmed, I would follow Supreme Court and Seventh Circuit precedent when interpreting federal statutes. In the absence of precedent, I would begin with the plain text of the statute. If the meaning of the plain text is clear, then my inquiry would end there. If the meaning of the plain text was not clear, I would consult the canons of statutory interpretation as authorized by the Supreme Court and Seventh Circuit. I would also consider persuasive authority from other circuits. Finally, I would examine the legislative history to the extent authorized by the Supreme Court and Seventh Circuit.

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

Response: If confirmed, I would begin with the text of the constitutional provision and follow Supreme Court and Seventh Circuit precedent in interpreting the text. In applying precedent to my interpretation, I would consider analogous constitutional provisions and if necessary, the canons of construction.

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

Response: The Supreme Court has looked to the original public meaning of the text when interpreting a constitutional provision. *See, e.g., New York State Rifle & Pistol Ass’n v. Bruen*, 142 S. Ct. 2111 (2022) and *District of Columbia v. Heller*, 545 U.S.

570 (2008). If confirmed, I would follow Supreme Court and Seventh Circuit precedent in determining when and how to apply the original meaning of a constitutional provision.

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

Response: Please see my response to Question 2.

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

Response: The plain meaning refers to the public understanding of the relevant language at the time of the enactment. *See, e.g., New York State Rifle & Pistol Ass’n v. Bruen*, 142 S. Ct. 2111 (2022) and *District of Columbia v. Heller*, 545 U.S. 570 (2008).

6. What are the constitutional requirements for standing?

Response: The requirements for standing are (1) injury in fact; (2) a causal link between the injury and the challenged conduct; and (3) a likelihood that the injury will be redressable by a favorable judicial decision. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).

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

Response: The Necessary and Proper Clause found in Article I, Section 8, of the Constitution grants Congress the authority to make all laws that are “necessary and proper” for carrying out its enumerated powers. As to the extent of that authority, the Supreme Court has said “[I]n determining whether the Necessary and Proper Clause grants Congress the legislative authority to enact a particular federal statute, we look to see whether the statute constitutes a means that is rationally related to the implementation of a constitutionally enumerated power.” *United States v. Comstock*, 560 U.S. 126, 134 (2010).

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

Response: If confirmed, I would follow Supreme Court and Seventh Circuit precedent. In *National Federation of Independent Business v. Sebelius*, 567 U.S. 519 (2012), the Supreme Court held that the constitutionality of an action taken by Congress is not dependent on explicit recitals of the specific power being exercised.

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

Response: Yes. The Constitution does protect certain rights that are not enumerated within its text. The Ninth Amendment states, “The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people.” Examples of these rights include the right to privacy (*Griswold v. Connecticut*, 318 U.S. 479 (1965)) and the right to travel (*Kent v. Dulles*, 357 U.S. 116 (1958)).

10. What rights are protected under substantive due process?

Response: Fundamental rights protected under substantive due process are those which are deeply rooted in our Nation’s history and tradition and which are implicit in the concept of ordered liberty. *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997). Examples of fundamental rights include: the right to marry, *Loving v. Virginia*, 388 U.S. 1 (1967); the right to privacy, *Griswold v. Connecticut*, 381 U.S. 479 (1965); and the right to have children, *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942).

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

Response: If confirmed, I will follow Supreme Court and Seventh Circuit precedent. The Supreme Court has held that the Due Process Clause does not protect the right to abortion. *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022). The doctrine in *Lochner* was overruled in *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937).

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

Response: Under the Commerce Clause, Congress has the power to regulate: (1) the use of channels of interstate commerce; (2) the instrumentalities of interstate commerce or person and things in interstate commerce; and (3) activities that substantially affect interstate commerce. *United States v. Lopez*, 514 U.S. 549 (1995).

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

Response: Suspect classification refers to a class of individuals who have been historically subject to discrimination. Race, national origin, and religion are examples of suspect classes that would trigger strict scrutiny. *See, e.g., Graham v. Richardson*, 403 U.S. 365, 372 (1971).

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

Response: Under the system of checks and balances, each branch of government has its own authority, but each branch depends on the authority of the other branches. This ensures that no single branch becomes too powerful and that the government remains accountable to the people. *See Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

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

Response: If confirmed, I follow Supreme Court and Seventh Circuit precedent to determine whether one branch of government had usurped the authority of another. *See Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

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

Response: Empathy should not play a role in a judge's consideration of a case.

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

Response: Both actions are inappropriate.

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

Response: I have not studied this issue. I do not have sufficient information on which to base a response.

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

Response: Judicial review refers to a court's power to review the actions of other branches or levels of government. "Judicial supremacy" is defined in Black's Law Dictionary (11th ed. 2019) as the "doctrine that interpretations of the Constitution by the federal judiciary in the exercise of judicial review, esp. U.S. Supreme Court interpretations, are binding on the coordinate branches of the federal government and the states."

20. Abraham Lincoln explained his refusal to honor the Dred Scott decision by asserting that "If the policy of the Government upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the Supreme Court . . . the people will have ceased to be their own rulers, having to that extent

practically resigned their Government into the hands of that eminent tribunal.” How do you think elected officials should balance their independent obligation to follow the Constitution with the need to respect duly rendered judicial decisions?

Response: Elected officials are bound to defend the Constitution. Elected officials are also required to follow decisions of the Supreme Court interpreting the Constitution. *Cooper v. Aaron*, 358 U.S. 1, 18 (1958). In addition, the constitutional amendment process provides a means for elected officials to address Supreme Court decisions with which they disagree.

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

Response: Judges should always understand that they are not law makers.

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

Response: If confirmed, I would be required to follow Supreme Court and Seventh Circuit precedent. It is not the role of a district court judge to determine whether a higher court has correctly decided a case.

- 23. When sentencing an individual defendant in a criminal case, what role, if any, should the defendant’s group identity(ies) (e.g., race, gender, nationality, sexual orientation or gender identity) play in the judges’ sentencing analysis?**

Response: None.

- 24. The Biden Administration has defined “equity” as: “the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.” Do you agree with that definition? If not, how would you define equity?**

Response: I do not have a personal definition of equity. Black’s Law Dictionary defines “equity” as “[f]airness; impartiality; even handed dealing.” If confirmed, I would treat all parties in my court fairly, impartially and evenly.

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

Response: Please see my response to Question 24 for the definition of “equity.” Black’s Law Dictionary (11th ed. 2019) defines “equality” as “[t]he quality, state, or condition of being equal” or “likeness in power or political status.”

26. Does the 14th Amendment’s equal protection clause guarantee “equity” as defined by the Biden Administration (listed above in question 24)?

Response: The Fourteenth Amendment prohibits a State from denying “any person within its jurisdiction the equal protection of the laws.” I am unaware of any precedent applying the term equity to the equal protection clause. If I am confirmed and I am presented with that question, I will follow Supreme Court and Seventh Circuit precedent.

27. How do you define “systemic racism?”

Response: I do not have a personal definition of systemic racism. Black’s Law Dictionary (11th ed. 2019) defines “systemic racism” as “the oppression of a racial group to the advantage of another as perpetuated by inequity within interconnected systems.”

28. How do you define “critical race theory?”

Response: I do not have a personal definition of critical race theory. Black’s Law Dictionary (11th ed. 2019) defines “critical race theory” as “[a] reform movement within the legal profession, particularly within academia, whose adherents believe that the legal system has disempowered racial minorities.”

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

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

SENATOR TED CRUZ

U.S. Senate Committee on the Judiciary

Questions for the Record for Byron Browning Conway nominated to serve as U.S. District Judge for the Eastern District of Wisconsin

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: The unenumerated rights clause of the Ninth Amendment preserves inherent rights that are not specifically enumerated in the Constitution. The Supreme Court has held that unenumerated rights which are “deeply rooted in this Nation’s history and tradition” and “implicit in the concept of ordered liberty,” are protected. *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997). As a nominee to the Federal District Court, I am prohibited from giving an opinion on a matter that may come before me. If confirmed as a District Court Judge, I will faithfully apply Supreme Court and Seventh Circuit precedent.

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

Response: My judicial philosophy starts with the oath taken by a Federal Judge if they are fortunate to be confirmed. In taking the oath, a judge swears to “administer justice without respect to persons, and to do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform the duties incumbent upon me under the Constitution and the laws of the United States. So help me God.”

I would pair adherence to the oath with a focus on Rule 1 of the Federal Rules of Civil Procedure and its criminal counterpart. Fed. R. Civ. P. 1 instructs that all of the other rules “should be construed, administered, and employed by the Court and the parties, to secure the just, speedy, and inexpensive determination of every action and proceeding.”

Adherence to the oath and administering the Federal Rules of Civil and Criminal Procedure as directed are the principles that will guide my judicial philosophy.

I am not sufficiently familiar with the philosophies of the many Supreme Court Justices to say which Justice’s philosophy would be most analogous to mine.

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

Response: Black’s Law Dictionary (11th ed. 2019) defines “originalism” as the doctrine “that words of a legal instrument are to be given the meanings they had when they were adopted.” I do not subscribe to a particular ideology of textual interpretation, but the

Supreme Court has applied originalism to decide cases. If confirmed as a District Court Judge, I will follow Supreme Court and Seventh Circuit precedent.

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

Response: Black’s Law Dictionary (11th ed. 2019) defines “living constitutionalism” as “The doctrine that the Constitution should be interpreted and applied in accordance with changing circumstances and, in particular, with changes in social values.” I do not subscribe to a particular ideology of textual interpretation and I am not aware that the Supreme Court has applied living constitutionalism to decide cases. If confirmed as a District Court Judge, I will apply Supreme Court and Seventh Circuit precedent.

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

Response: Yes. The Supreme Court has stated that it “normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment.” *Bostock v. Clayton County* 140 S. Ct. 1731, 1738 (2020). If confirmed, I will apply Supreme Court and Seventh Circuit precedent when interpreting statutory and constitutional provisions.

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: The Supreme Court has stated that it “normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment.” *Bostock v. Clayton County*, 140 S. Ct. 1731, 1738 (2020). If confirmed, I will apply Supreme Court and Seventh Circuit precedent when interpreting statutory and constitutional provisions.

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

Response: The Constitution is a document that does not change unless it is amended according to the procedures in Article V of the Constitution.

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

Response: Yes. *Dobbs* is binding precedent.

- a. **Was it correctly decided?**

Response: As a nominee to the Federal District Court, I am prohibited from expressing my personal beliefs or commenting on whether an opinion of the Supreme Court was “correctly decided.” The decision in *Dobbs v. Jackson Women’s Health Organization* is binding precedent and, if confirmed as a District Judge, I will apply the decision fully and faithfully.

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

Response: Yes. It is binding precedent.

a. Was it correctly decided?

Response: As a nominee to the Federal District Court, I am prohibited from expressing my personal beliefs or commenting on whether an opinion of the Supreme Court was “correctly decided.” The decision in *Cooper v. Aaron* is binding precedent and, if confirmed as a District Judge, I will apply the decision fully and faithfully.

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

Response: Yes. It is binding precedent.

a. Was it correctly decided?

Response: As a nominee to the Federal District Court, I am prohibited from expressing my personal beliefs or commenting on whether an opinion of the Supreme Court was “correctly decided.” The decision in *New York Rifle & Pistol Association v. Bruen* is binding precedent and, if confirmed as a District Judge, I will apply the decision fully and faithfully.

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

Response: Yes. It is binding precedent.

a. Was it correctly decided?

Response: Yes. As a nominee to the Federal District Court, I would normally be prohibited from commenting on whether an opinion of the Supreme Court was “correctly decided.” However, the issue of de jure segregation is not likely to be relitigated. I believe it was correctly decided.

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

Response: Yes. It is binding precedent.

a. Was it correctly decided?

Response: As a nominee to the Federal District Court, I am prohibited from expressing my personal beliefs or commenting on whether an opinion of the Supreme Court was “correctly decided.” The decision in *Students for Fair Admissions v. Harvard* is binding precedent and, if confirmed as a District Judge, I will apply the decision fully and faithfully.

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

Response: Yes. It is binding precedent.

a. Was it correctly decided?

Response: As a nominee to the Federal District Court, I am prohibited from expressing my personal beliefs or commenting on whether an opinion of the Supreme Court was “correctly decided.” The decision in *Gibbons v. Ogden* is binding precedent and, if confirmed as a District Judge, I will apply the decision fully and faithfully.

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

Response: The offenses that trigger a rebuttable presumption in favor of pretrial detention are set forth in 18 U.S.C. § 3142 and include certain drug offenses, certain firearm and terrorism offenses, human trafficking offenses, and certain offenses involving minors.

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

Response: Given the nature of the offenses listed, it seems the policy is concerned with the risk posed by defendants charged with certain crimes and the safety of 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 Religious Freedom Restoration Act (RFRA) and the Free Exercise Clause of the First Amendment both limit the government from interfering with personal and organizational exercise of religious freedom. *See, e.g., Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014); *303 Creative LLC v. Elenis*, 143 S. Ct. 2298 (2023); *Tandon v. Newsom*, 141 S. Ct. 1294 (2021).

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

Response: The Religious Freedom Restoration Act (RFRA) prohibits the federal government from “substantially burden[ing] a person’s exercise of religion even if that burden results from a rule of general applicability” unless the application of the burden “(1) is in furtherance of a compelling government interest; and (2) is the least restrictive means of furthering that compelling government interest.” 42 U.S.C. § 2000bb-1(a), (b). *See, e.g., Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm’n*, 138 S. Ct. 1719 (2018); *Carson v. Makin*, 142 S. Ct. 1987 (2022); *Tandon v. Newsom*, 141 S. Ct. 1294 (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 of Brooklyn v. Cuomo*, 141 S. Ct. 63 (2020), the Supreme Court held that Governor Cuomo’s executive order, which imposed restrictions on attendance at religious services in certain areas of New York based on the severity of the COVID-19 outbreak, likely violated the First Amendment’s guarantee of the free exercise of religion. The Court applied strict scrutiny and held that the restrictions were not neutral or generally applicable because they imposed more stringent limits on religious gatherings than on various secular businesses. The Court held that the plaintiffs were entitled to an injunction because they were likely to prevail on the merits, they could show irreparable harm, and because the government failed to show how enjoining the restrictions would harm the public.

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

Response: *Tandon v. Newsom*, involved a challenge to California’s COVID-19 restrictions on in-home religious gatherings. The restrictions limited the number of households that could gather for in-home religious activities. The Supreme Court held that California’s restrictions on in-home religious gatherings likely violated the Free Exercise Clause of the First Amendment because they treated religious activities less favorably than comparable secular activities. The Court applied strict scrutiny and found that the restrictions were not narrowly tailored to serve the state’s compelling interest in controlling the spread of COVID-19.

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

Response: Yes.

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

Response: In *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, a Colorado baker declined to bake a cake for a same-sex couple’s wedding because of the baker’s religious beliefs. The couple filed a complaint with the Colorado Civil Rights Commission. The Commission required the owner to bake the cake. The Supreme Court ruled in favor of Masterpiece Cakeshop and its owner. The Court held that the Colorado Civil Rights Commission violated the owner’s rights under the Free Exercise Clause of the First Amendment. The Court’s decision was based on the Commission’s failure to treat the owner’s case with the required religious neutrality, particularly in light of the Commission’s biased statements and inconsistent application of the law.

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. A religious belief that is sincerely held is protected under the First Amendment. See *Burwell v. Hobby Lobby Stores*, 573 U.S. 682 (2014).

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

Response: Yes, an individual’s religious beliefs are constitutionally protected as long as they are sincere. See, e.g. *Frazee v. Illinois Dept. of Empl. Sec.*, 489 U.S. 829, 833 (1989).

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

Response: Yes, as long as it is sincere. Please see my answer to Question 22 (a).

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

Response: I do not have sufficient knowledge to comment on official positions of the Catholic Church. As a nominee to the Federal District Court, it is not appropriate for me to opine on the official position of any religion.

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: This case involved the ministerial exception which bars employment

discrimination lawsuits against religious organizations by employees who perform religious functions. The Supreme Court ruled that the Establishment Clause and the Free Exercise Clause prevent courts from interfering in the employment relationship between religious institutions and employees who perform key religious roles. The Supreme Court addressed the scope of the ministerial exception which was applied to the teachers in the case based on their duties as opposed to their titles.

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: In *Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2021), the City refused to contract with Catholic Social Services (CSS) unless CSS agreed to certify same-sex couples as foster parents. The Supreme Court held that the City of Philadelphia’s refusal to contract with CSS, based on CSS’s religious objections to certifying same-sex couples as foster parents, violated the First Amendment’s Free Exercise Clause. The Court found that Philadelphia’s non-discrimination requirement in the foster care contract was not neutral and generally applied because there were exceptions that could be granted by the Commissioner to secular groups. *Id.* at 1878. The Supreme Court applied strict scrutiny and held that the city failed to prove that their policy was narrowly tailored to meet a compelling interest.

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*, 142 S. Ct. 1987 (2022), the Supreme Court concluded that Maine’s requirement for schools to be nonsectarian effectively discriminated against religious institutions. The Supreme Court explained that by paying for tuition for certain students at private schools “so long as the schools are not religious,” Maine was “discriminat[ing] against religion.” *Id.* at 1998. The program did not survive strict scrutiny because “[a] State’s antiestablishment interest does not justify enactments that exclude some members of the community from an otherwise generally available public benefit because of their religious exercise.” *Id.* at 1998

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*, 142 S. Ct. 2407 (2022), the Supreme Court ruled that the school district violated Coach Joseph Kennedy's First Amendment rights by disciplining him for praying on the football field after games. The Court held that Kennedy's prayers were a form of private religious expression protected by the Free Exercise and Free Speech Clauses of the First Amendment. The

Court applied strict scrutiny and found that the school district failed to show that its actions served a compelling purpose that was narrowly tailored to that purpose. *Id.* at 2426.

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: *Mast v. Fillmore County*, 141 S. Ct. 2430 (2021), involved members of an Amish community who challenged a county regulation that required modern septic systems. The Supreme Court vacated a state court judgment and remanded the case for further consideration in light of the recent decision in *Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2021).

In his concurrence, Justice Gorsuch emphasized the significance of the case as it related to the free exercise of religion. Justice Gorsuch discussed the Supreme Court’s recent decision in *Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2021). In referencing the *Fulton* decision, Justice Gorsuch noted the need for the lower court to apply strict scrutiny in cases where religious exercise is impacted by government actions.

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: As a nominee to the Federal District Court, I am prohibited from expressing an opinion regarding matters that may come before the courts, including the constitutionality of federal statutes. If confirmed as a District Judge, I will follow Supreme Court and Seventh Circuit precedent.

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: As a nominee to the Federal District Court, it would be improper for me to comment on whether such practices in political appointments are appropriate or constitutional.

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

Response: The Supreme Court has stated that disparate impact alone is not determinative of discriminatory intent. *See Village of Arlington Heights v. Metropolitan Housing Development Corporation* 429 U.S. 252, 266 (1977).

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

Response: This is a question for policy makers to decide. As a nominee to the Federal District Court, I am prohibited from expressing an opinion. If confirmed, I will apply Supreme Court and Seventh Circuit precedent.

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: The Supreme Court addressed this question in *New York Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111 (2022) and in *District of Columbia v. Heller*, 554 U.S. 570 (2008). The Supreme Court’s decisions in these cases establish that the original public meaning of the Second Amendment guarantees an individual the right to bear arms for self-defense inside and outside the home.

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 these cases, the Supreme Court held that restrictions on the Right to Bear Arms will not be justified if the government is unable to demonstrate that the regulation is consistent with this Nation’s historical tradition of firearm regulation.

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

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

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

Response: I am not aware of any Supreme Court precedent which suggests that the right to own a firearm receives less protection than other enumerated rights. *Bruen* clearly states that the right to bear arms in public for self-defense is not a second class right.

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

Response: Please see my response to Question 39.

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 executive “shall take Care that the Laws be faithfully executed.” In determining whether to prosecute a case, the executive branch has “exclusive authority and absolute discretion.” *United States v. Nixon*, 418 U.S. 683, 693 (1974). As a nominee to the Federal District Court, I am prohibited from expressing an opinion as to how this discretion should be applied.

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

Response: It is my understanding that an act of prosecutorial discretion is one involving the power of a prosecutor to decide how to proceed with a case. A substantive administrative rule change is governed by the Administrative Procedure Act which

addresses the procedures of administrative law that allow for rule changes.

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

Response: No.

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. HHS*, 141 S. Ct. 2485 (2021), the U.S. Supreme Court addressed the legality of the Centers for Disease Control and Prevention (CDC)'s nationwide eviction moratorium, which was implemented in response to the COVID-19 pandemic. The Court held that the CDC did not have the legal authority under the Public Health Service Act to impose the broad measure, which was intended to prevent evictions during the COVID-19 pandemic. The Court emphasized that major policy decisions like the eviction moratorium should be made by Congress, not by an administrative agency.

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: I do not believe this is appropriate.

Questions from Senator Thom Tillis
For Byron B. Conway, nominated to serve as U.S. District Judge for the Eastern District of
Wisconsin

- 1. Can a judge's personal views and background benefit them in interpreting and applying the law, or would you say that they are irrelevant?**

Response: A judge's personal views and background should be irrelevant to their interpretation and application of the law.

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

Response: Impartiality is an expectation for a judge.

- 3. What is judicial activism? Do you consider judicial activism appropriate?**

Response: Judicial activism refers to the actions of judges who decide cases based on their personal beliefs. Judicial activism is not appropriate.

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

Response: No. Judges are not policy makers. It is not appropriate for a judge to disregard decisions of Congress or state legislative bodies in favor of a judge's own beliefs.

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

Response: Faithfully interpreting the law may sometimes result in an outcome that is undesirable in relation to the personal beliefs of a judge. If confirmed, I will reconcile that by acknowledging that a good judge will likely, at some point in their career, issue a decision that results in an outcome which they would not personally prefer. I will apply the law to the facts regardless of whether the decision will result in an outcome that may be considered undesirable.

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

Response: I will commit to apply all precedents of the Supreme Court including, *New York State Rifle & Pistol Association v. Bruen*, which holds that 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.

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

Response: If confirmed, in considering qualified immunity cases, I would apply Supreme Court and Seventh Circuit precedent to determine whether a statutory or constitutional right has been violated and whether that right was clearly established at the time of the alleged violation. *See, e.g., Pearson v. Callahan*, 129 S. Ct. 808 (2009).

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

Response: As a nominee to the Federal District Court, I am prohibited from giving an opinion on a policy matter. If confirmed, I would apply relevant Supreme Court and Seventh Circuit precedent regarding qualified immunity. The Supreme Court has stated that “qualified immunity balances two important interests--the need to hold public officials accountable when the exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably.” *Pearson v. Callahan*, 129 S. Ct. 808, 815 (2009).

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

Response: Please see my response to Question 8.

10. What are your thoughts regarding the importance of ensuring that all IP rights are in fact enforced?

Response: Article I, Section 8, Clause 8 of the Constitution grants Congress power “to promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.” If confirmed, I would apply relevant Supreme Court and Seventh Circuit precedent on this subject.

11. In the context of patent litigation, in some judicial districts plaintiffs are allowed to request that their case be heard within a particular division. When the requested division has only one judge, this allows plaintiffs to effectively select the judge who will hear their case. What are your thoughts on this practice, which typically is referred to as “forum shopping” and/or “judge shopping?”

Response: If confirmed, I will apply relevant Supreme Court and Seventh Circuit precedent in all cases before me. I will adhere to the judicial oath and to the Federal Rules of Civil Procedure. If confirmed, no litigant should expect any decision in a case before me that is contrary to that philosophy.

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

Response: As a nominee to the Federal District Court, I am prohibited from commenting on the state of existing laws on subject matters that may come before me. If confirmed, I would apply relevant Supreme Court and Seventh Circuit precedent on this subject.