

Senator Lindsey Graham, Ranking Member
Questions for the Record
Judge Anthony Joseph Brindisi
Nominee to be United States District Judge for the Northern District of New York

1. **Have you ever tried a criminal case?**

Response: No.

2. **Have you ever presided over a criminal case?**

Response: Although I have not presided over any criminal trials, my experience as a civil court trial judge over the past two and a half years has required me to develop a solid understanding of criminal law. In my current role, I preside over cases involving allegations of false arrest. As the trier of both fact and law, I am tasked with determining whether law enforcement officers had probable cause to make an arrest. Additionally, a significant portion of my docket involves claims of excessive force by law enforcement officers. These cases require me to assess the reasonableness of the officers' actions under the Fourth Amendment's objective reasonableness standard. Moreover, my court's jurisdiction includes civil claims related to wrongful convictions, which necessitates my familiarity with the standards that govern such claims under New York State law. Specifically, individuals challenging wrongful convictions must prove their innocence by clear and convincing evidence. Beyond my judicial role, I spent ten years as a policymaker in the New York State Assembly and the U.S. House of Representatives, where I regularly voted on and studied issues related to criminal law. In addition, during my 20 years as a civil litigator, many of the cases I handled had criminal elements. For example, I represented estates in wrongful death cases where the defendants faced accompanying murder charges.

3. **In 2019, as a member of Congress, you were an original cosponsor of a bill called the "Equality Act" (H.R. 5). This bill explicitly states that "an individual shall not be denied access to a shared facility, including a restroom, a locker room, and a dressing room, that is in accordance with the individual's gender identity."**

a. **Why did you support this bill?**

Response: It has been over four years since I co-sponsored this legislation, and I do not recall every specific detail of my reasoning at that time. However, a review of some of my public statements from around that time indicate that I was motivated in part by prohibiting discrimination based on sex, sexual orientation, and gender identity. The *Bostock v. Clayton County* decision, issued by the U.S. Supreme Court in 2020, held that Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination "because of sex," also protects employees against discrimination based on sexual orientation and gender identity. My general policy as a legislator in the House of Representatives was to not co-sponsor any legislation that was not bipartisan, and the fact that the Equality Act

had bipartisan support likely played a role in my decision to sponsor it. For the past two and a half years, I have served as a judge in the New York State Court of Claims, and I fully understand that the role of a judge is fundamentally different from that of a policymaker, requiring me to act as a neutral arbiter. If confirmed as a district court judge, I assure you that my past policy positions will in no way affect my ability to be fair, impartial, and neutral.

b. Do you believe it is acceptable to require biological women to share restrooms, locker rooms and dressing rooms with biological men?

Response: Matters concerning privacy, harassment, and the rights of individuals are governed by the Constitution, statutory law, and judicial precedent. If confirmed, I would follow binding Supreme Court and Second Circuit precedent in any case presenting this issue. My personal views or past policy positions would play no role in my review. In my current role as a New York State Court of Claims Judge and Acting Supreme Court Justice in Oneida County, as well as a judicial nominee for the Federal District Court in the Northern District of New York, I am precluded by the New York State Code of Judicial Conduct under Rule 100.3 (B)(8) and the Code of Conduct for United States Judges under Canon 3(A)(6), from commenting on my personal beliefs but to apply the law impartially.

c. Is a prison a “shared facility” under this definition?

Response: My understanding is that the “Equality Act” is currently pending in Congress, and if it passes and becomes law, it may face various challenges in federal court. Should I be fortunate enough to be confirmed as a district court judge, I may be called upon to review the statutory language of this legislation. In my current role as a New York State Court of Claims Judge and Acting Supreme Court Justice in Oneida County, as well as a judicial nominee for the Federal District Court in the Northern District of New York, I am precluded by the New York State Code of Judicial Conduct under Rule 100.3 (B)(8) and the Code of Conduct for United States Judges under Canon 3(A)(6), from commenting prematurely on issues or questions that could potentially come before the court. If confirmed, I would follow binding Supreme Court and Second Circuit precedent in any case presenting this issue. My personal views or past policy positions would play no role in my review.

d. Do you regret cosponsoring this bill?

Response: My general policy as a legislator in the House of Representatives was to not vote for any legislation that did not have bipartisan support, and the fact that this bill had bipartisan support likely played a role in my decision to co-sponsor it. For the past two and a half years, I have served as a judge in the New

York State Court of Claims, and I fully understand that the role of a judge is fundamentally different from that of a policymaker, requiring me to act as a neutral arbiter. If confirmed as a district court judge, I assure you that my past policy positions will in no way affect my ability to be fair, impartial, and neutral. Additionally, as noted above, a review of some of my public statements from around that time indicate that I was motivated in part by prohibiting discrimination based on sex, sexual orientation, and gender identity. Many of the provisions of the “Equality Act” became Supreme Court precedent in the *Bostock v. Clayton County* decision, issued by the U.S. Supreme Court in 2020, holding that Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination “because of sex,” also protects employees against discrimination based on sexual orientation and gender identity.

4. You conceded your 2020 election defeat on Feb. 08, 2021. Please explain why it took so long for you to concede you lost the election?

Response: A review of my public statements from that time indicate that I conceded the race to Claudia Tenney in early February 2021, following the resolution of a court case involving legal challenges filed by both campaigns. The close margin of the election results led to a prolonged process involving the verification of affidavit and absentee ballots, and a series of court orders. The recanvass lasted for nearly three months. Following the conclusion of the election, the Department of Justice (DOJ) did sue Oneida County, New York, over issues related to the administration of the 2020 election. The lawsuit, filed in 2021, alleged that the county violated federal voting laws, particularly the National Voter Registration Act (NVRA) and the Help America Vote Act (HAVA). The lawsuit stemmed from problems during the election between Claudia Tenney and myself, including Oneida County's failure to process voter registration applications properly. The DOJ asserted that Oneida County did not meet its obligations under federal law to ensure that all eligible voters could register and participate in the election. Specifically, the county was accused of failing to process applications submitted through the Department of Motor Vehicles (DMV) in a timely manner, resulting in voters being left off the registration rolls on Election Day. In my concession statement, I emphasized my respect for the democratic process and thanked supporters for their efforts. I acknowledged the challenges of the recanvass and legal battles but expressed pride in my service during my term in Congress. I also wished Claudia Tenney well in her role as the district's representative and indicated my focus would shift to family and exploring other ways to serve the community.

5. While running for Congress in 2018 you told the Observer-Dispatch that you were “opposed to fracking.” Likewise in 2014 the Observer-Dispatch reported that you supported “The Earth Day Lobby Day’s” “entire agenda,” which included a moratorium on fracking, and mandating the use of climate data in state planning and permitting programs.

- a. **Given your strong public opposition to fracking, would you recuse yourself from any case assigned to you that involves fracking or related issues? If not, why not?**

Response: If I am fortunate to be confirmed as a district court judge, I will follow the guidelines set forth in 28 U.S.C. § 455 in any cases in which my impartiality might reasonably be questioned requiring recusal. Additionally, for the past two and a half years, I have served as a judge in the New York State Court of Claims, and I fully understand that the role of a judge is fundamentally different from that of a policymaker, requiring me to act as a neutral arbiter. If confirmed as a district court judge, I assure you that my past policy positions will in no way affect my ability to be fair, impartial, and neutral.

In 2013, the Observer-Dispatch reported that, according to certain environmental groups, you were “among the state’s greenest legislators.” In 2016 you voted in favor of “the New York State Climate and Community Protection Act” which “Inside Climate News” called “the nation’s most ‘ambitious’ climate change bill.” This legislation requires New York State to reduce greenhouse gas emissions from major sources to zero by 2050.

- b. **Given your strong public positions on issues related to greenhouse gas emissions, would you recuse yourself from any case assigned to you that involves greenhouse gas emissions or related issues? If not, why not?**

Response: If I am fortunate to be confirmed as a district court judge, I will follow the guidelines set forth in 28 U.S.C. § 455 in any cases in which my impartiality might reasonably be questioned requiring recusal. Additionally, for the past two and a half years, I have served as a judge in the New York State Court of Claims, and I fully understand that the role of a judge is fundamentally different from that of a policymaker, requiring me to act as a neutral arbiter. If confirmed as a district court judge, I assure you that my past policy positions will in no way affect my ability to be fair, impartial, and neutral.

6. **In 2013, John K. Ciccotti, a former Rome Councilman, told the Observer-Dispatch he spoke with you “on a daily basis”:**

I've got over 10 years of experience. I know who to contact, I know how to come across to people and I know how to go get grant money. . . . (Assemblyman Anthony) Brindisi, I talk to [him] on a daily basis. Another thing is I have a voice. I am relentless and I will not stop until I get it.

According to the Observer-Dispatch, Mr. Ciccotti was, at this time he made this statement, a convicted cocaine dealer:

John Ciccotti is a former First Ward councilman. During his fifth and final two-year term in 2001, he was charged with selling

cocaine to a police informant and later sent to federal prison for 14 months.

a. What was the nature of your relationship with Mr. Ciccotti?

Response: During my ten years as a legislator in the New York State Assembly and the U.S. House of Representatives, I represented thousands of constituents across Upstate New York and regularly interacted with hundreds of local officials. Although it has been over a decade since the statements attributed to Mr. Ciccotti were made, I have a vague recollection of him as a councilperson in the City of Rome, which I represented. I had no personal relationship with Mr. Ciccotti, only a professional one, as he was one of many local officials I interacted with during my tenure. I cannot recall the last time I spoke with him and have no current relationship with him.

b. Are you still in contact with Mr. Ciccotti? If not when did you stop communicating with him?

Response: See Response to 6a above.

7. While serving in Congress you voted to impeach President Donald Trump and made statements about him and his conduct in office.

a. Would you recuse yourself from any case assigned to you that involves the former President? If not, why not?

Response: While serving in Congress, I maintained a strong working relationship with President Trump and the Trump White House. I was one of the few Democratic members of Congress who regularly attended events at the invitation of the White House during my tenure. President Trump signed into law twelve pieces of bipartisan legislation that I authored. If I am fortunate to be confirmed as a district court judge, I will follow the guidelines set forth in 28 U.S.C. § 455 in any cases in which my impartiality might reasonably be questioned requiring recusal. Additionally, for the past two and a half years, I have served as a judge in the New York State Court of Claims, and I fully understand that the role of a judge is fundamentally different from that of a policymaker, requiring me to act as a neutral arbiter. If confirmed as a district court judge, I assure you that my past policy positions will in no way affect my ability to be fair, impartial, and neutral.

8. You opposed the proposed New York “Education Investment Tax Credit.” In 2015 the magazine “Forward” explained that this proposal would provide “a massive tax credit for those people making donations to private school scholarship funds.” The tax credit was supported by Catholic and Jewish groups.

a. Why did you oppose this tax credit?

Response: It has been many years since I reviewed the text of that bill, and I do not recall every specific detail of my reasoning at that time. However, a review of my public statements at that time indicates that my opposition to this tax credit concerned the income eligibility limits. At that time, I explained that the credit would disproportionately benefit wealthy families who could already afford to send their children to private and parochial schools. Furthermore, I explained that I believed the income eligibility thresholds were set too high, allowing wealthier families to take advantage of the tax credit, while offering little to no benefit for lower-income families who would still struggle to afford private education even with the credit. Upon additional review of my legislative record, I note that I supported providing private schools with funding for mandated services, such as health and safety measures or reimbursement for state-mandated administrative tasks. For the past two and a half years, I have served as a judge in the New York State Court of Claims, and I fully understand that the role of a judge is fundamentally different from that of a policymaker, requiring me to act as a neutral arbiter. If confirmed as a district court judge, I assure you that my past policy positions will in no way affect my ability to be fair, impartial, and neutral.

9. Are you a citizen of the United States?

Response: Yes.

10. 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.**

11. 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.

12. 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.

- 13. 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. If I am fortunate to be confirmed as a district court judge, when interpreting the Constitution I would be guided by the plain meaning of the provision, Supreme Court and Second Circuit precedent.

- 14. 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.

- 15. 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. It is the responsibility of Congress to transform an international-law norm into domestic law. See *Medellin v. Texas*, 128 S.Ct. 1346, 1369 (2008)

- 16. Please define the term “prosecutorial discretion.”**

Response: Black’s Law Dictionary (12th ed. 2024) defines the term “prosecutorial discretion” 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.”

- 17. 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. This is not the approach I take as a current state court judge and if I am fortunate to be confirmed, I will follow binding precedent of the Supreme Court and Second Circuit in my decisions.

18. **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.

19. **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.

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

Response: A prisoner in federal custody under sentence may seek relief from the sentence in several ways: (1) by filing a direct appeal of the district court’s judgment to the Court of Appeals under 28 U.S.C. § 1291; (2) by moving to vacate, set aside, or correct the sentence under 28 U.S.C. § 2255; (3) by filing a petition for a writ of habeas corpus under 28 U.S.C. § 2241; or (4) by filing a motion to modify the term of imprisonment, such as for compassionate release, under 18 U.S.C. § 3582(c).

21. **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, Inc., v. University of North Carolina* and *Students for Fair Admissions Inc. v. President & Fellows of Harvard College*, the petitioner, Students for Fair Admissions (SFFA), a nonprofit organization, filed lawsuits against Harvard and the University of North Carolina (UNC), challenging their race-based admissions programs. The Supreme Court held that SFFA had established standing under Article III. Furthermore, the Court ruled that both Harvard’s and UNC’s admissions programs violated the Equal Protection Clause of the Fourteenth Amendment, as their asserted compelling interests for using race in admissions were not sufficiently measurable, discriminated based on race and, therefore, failed to meet the strict scrutiny standard.

22. **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: I have participated in hiring decisions as a partner in my former law firm, Brindisi, Murad and Brindisi-Pearlman, LLP., as a member of the New York State Assembly, as a representative in the U.S. House of Representatives, and as a judge in the New York State Court of Claims.

23. **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.

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

Response: No.

25. **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, 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.

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

Response: Yes.

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

Response: In *303 Creative LLC v. Elenis*, the Supreme Court addressed whether a website designer could refuse to create wedding websites for same-sex couples based on First Amendment grounds. The Court held that the First Amendment prohibits the state from compelling a website designer to create expressive content that conveys messages with which the designer disagrees. The ruling affirmed that the state cannot force individuals to engage in speech or creative expression that conflicts with their personal beliefs, thus protecting the designer's right to decline services that endorse messages inconsistent with sincere religious beliefs that marriage should be between a man and a woman.

28. **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 remains precedent.

29. **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: The analysis I would use to determine whether a law that regulates speech is “content-based” or “content-neutral” starts with examining Supreme Court and Second Circuit precedent. The Supreme Court has held that content-based laws regulate speech based on its substance and are subject to strict scrutiny, requiring the government to prove the law is the least restrictive means of advancing a compelling interest. In contrast, content-neutral laws regulate the time, place, or manner of speech and are reviewed under intermediate scrutiny, making them more likely to withstand legal challenges. See *Reed v. Town of Gilbert*, 576 U.S. 155 (2015). Under strict scrutiny, the government rarely succeeds in defending content-based restrictions, as seen in cases like *Sable Communications of California v. FCC*, 492 U.S. 115 (1989).

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

Response: In true-threat cases, the standard the State must prove for determining whether a statement is not protected speech under the true threats doctrine is that the defendant had some level of subjective awareness that their statements could be perceived as

threatening. However, the First Amendment only requires that this awareness meets the standard of recklessness. *Counterman v. Colorado*, 600 U.S. 66 (2023).

- 31. Under Supreme Court and Second 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: The Supreme Court has stated in *U.S. Bank Nat’l Ass’n v. Vill. at Lakeridge*, 583 U.S. 387 (2018) in evaluating what the Court terms “basic” or “historical” fact involves “addressing questions of who did what, when or where, how or why.” *See also Thompson v. Keohane*, 516 U.S. 99 (1995). Such factual findings are reviewable only for clear error. Questions of law refers to the application of a legal standard to undisputed or established facts. *Guerrero-Lasprilla v. Barr*, 140 S. Ct. 1062 (2020). Specific sources that courts consider will depend on the nature of the case; however, appellate courts will review the trial record when evaluating a question of fact or a question of law to make a determination.

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

Response: The statute does not prioritize any one factor over another. If confirmed, I will take all the factors outlined in 18 U.S.C. § 3553 into account when making sentencing decisions.

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

Response: In my current role as a New York State Court of Claims Judge and Acting Supreme Court Justice in Oneida County, as well as a judicial nominee for the Federal District Court in the Northern District of New York, I am precluded by the New York State Code of Judicial Conduct under Rule 100.3 (B)(8), and the Code of Conduct for United States Judges under Canon 3(A)(6), from commenting on the quality of the reasoning in Supreme Court decisions. If confirmed, I will adhere to all binding Supreme Court and Second Circuit precedent.

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

Response: In my current role as a New York State Court of Claims Judge and Acting Supreme Court Justice in Oneida County, as well as a judicial nominee for the Federal District Court in the Northern District of New York, I am precluded by the New York State Code of Judicial Conduct under Rule 100.3 (B)(8), and the Code of Conduct for United States Judges under Canon 3(A)(6), from commenting on the quality of the

reasoning in Second Circuit decisions. If confirmed, I will adhere to all binding Supreme Court and Second Circuit precedent.

35. 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.”

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

Response: I am not aware of any Supreme Court or Second Circuit precedent holding that 18 U.S.C. § 1507 is unconstitutional. In *Cox v. Louisiana*, 379 U.S. 559 (1965), the Supreme Court upheld a state statute based on 18 U.S.C. § 1507. *Id.* at 561, 564. In my current role as a New York State Court of Claims Judge and Acting Supreme Court Justice in Oneida County, as well as a judicial nominee for the Federal District Court in the Northern District of New York, I am precluded by the New York State Code of Judicial Conduct under Rule 100.3 (B)(8), and the Code of Conduct for United States Judges under Canon 3(A)(6), from commenting on my personal beliefs or commenting prematurely on issues or questions that could potentially come before the court. If confirmed, and such a case presented to me, I would review the particular facts of the case, and follow binding Supreme Court and Second Circuit precedent in any case presenting this issue.

37. 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. In my current role as a New York State Court of Claims Judge and Acting Supreme Court Justice in Oneida County, as well as a judicial nominee for the Federal District Court in the Northern District of New York, I am precluded by the New York State Code of Judicial Conduct under Rule 100.3 (B)(8), and the Code of Conduct for United States Judges under Canon 3(A)(6), from commenting on the correctness of Supreme Court decisions. Consistent with the practice of prior judicial nominees, however, *Brown v. Board of Education* falls within a small number of cases that is so unlikely to ever be relitigated that I can say it was correctly decided

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

Response: Yes. In my current role as a New York State Court of Claims Judge and Acting Supreme Court Justice in Oneida County, as well as a judicial nominee for the Federal District Court in the Northern District of New York, I am precluded by the New York State Code of Judicial Conduct under Rule 100.3 (B)(8), and the Code of Conduct for United States Judges under Canon 3(A)(6), from commenting on the correctness of Supreme Court decisions. Consistent with the practice of prior judicial nominees, however, *Loving v. Virginia* falls within a small number of cases that is so unlikely to ever be relitigated that I can say it was correctly decided.

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

Response: In my current role as a New York State Court of Claims Judge and Acting Supreme Court Justice in Oneida County, as well as a judicial nominee for the Federal District Court in the Northern District of New York, I am precluded by the New York State Code of Judicial Conduct under Rule 100.3 (B)(8), and the Code of Conduct for United States Judges under Canon 3(A)(6), from commenting on the correctness of Supreme Court decisions. If confirmed, I will adhere to all binding Supreme Court and Second Circuit precedent.

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

Response: In my current role as a New York State Court of Claims Judge and Acting Supreme Court Justice in Oneida County, as well as a judicial nominee for the Federal District Court in the Northern District of New York, I am precluded by the New York State Code of Judicial Conduct under Rule 100.3 (B)(8), and the Code of Conduct for United States Judges under Canon 3(A)(6), from commenting on the correctness of Supreme Court decisions. The Supreme Court overruled *Roe v. Wade* in *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022). If confirmed, I will adhere to all binding Supreme Court and Second Circuit precedent.

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

Response: In my current role as a New York State Court of Claims Judge and Acting Supreme Court Justice in Oneida County, as well as a judicial nominee for the Federal District Court in the Northern District of New York, I am precluded by the New York State Code of Judicial Conduct under Rule 100.3 (B)(8), and the Code of Conduct for United States Judges under Canon 3(A)(6), from commenting on the correctness of Supreme Court decisions. The Supreme Court overruled *Planned Parenthood v. Casey* in *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022). If confirmed, I will adhere to all binding Supreme Court and Second Circuit precedent.

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

Response: In my current role as a New York State Court of Claims Judge and Acting Supreme Court Justice in Oneida County, as well as a judicial nominee for the Federal District Court in the Northern District of New York, I am precluded by the New York State Code of Judicial Conduct under Rule 100.3 (B)(8), and the Code of Conduct for United States Judges under Canon 3(A)(6), from commenting on the correctness of Supreme Court decisions. If confirmed, I will adhere to all binding Supreme Court and Second Circuit precedent.

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

Response: In my current role as a New York State Court of Claims Judge and Acting Supreme Court Justice in Oneida County, as well as a judicial nominee for the Federal District Court in the Northern District of New York, I am precluded by the New York State Code of Judicial Conduct under Rule 100.3 (B)(8), and the Code of Conduct for United States Judges under Canon 3(A)(6), from commenting on the correctness of Supreme Court decisions. If confirmed, I will adhere to all binding Supreme Court and Second Circuit precedent.

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

Response: In my current role as a New York State Court of Claims Judge and Acting Supreme Court Justice in Oneida County, as well as a judicial nominee for the Federal District Court in the Northern District of New York, I am precluded by the New York State Code of Judicial Conduct under Rule 100.3 (B)(8), and the Code of Conduct for United States Judges under Canon 3(A)(6), from commenting on the correctness of Supreme Court decisions. If confirmed, I will adhere to all binding Supreme Court and Second Circuit precedent.

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

Response: In my current role as a New York State Court of Claims Judge and Acting Supreme Court Justice in Oneida County, as well as a judicial nominee for the Federal District Court in the Northern District of New York, I am precluded by the New York State Code of Judicial Conduct under Rule 100.3 (B)(8), and the Code of Conduct for United States Judges under Canon 3(A)(6), from commenting on the correctness of Supreme Court decisions. If confirmed, I will adhere to all binding Supreme Court and Second Circuit precedent.

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

Response: In my current role as a New York State Court of Claims Judge and Acting Supreme Court Justice in Oneida County, as well as a judicial nominee

for the Federal District Court in the Northern District of New York, I am precluded by the New York State Code of Judicial Conduct under Rule 100.3 (B)(8), and the Code of Conduct for United States Judges under Canon 3(A)(6), from commenting on the correctness of Supreme Court decisions. If confirmed, I will adhere to all binding Supreme Court and Second Circuit precedent.

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

Response: In my current role as a New York State Court of Claims Judge and Acting Supreme Court Justice in Oneida County, as well as a judicial nominee for the Federal District Court in the Northern District of New York, I am precluded by the New York State Code of Judicial Conduct under Rule 100.3 (B)(8), and the Code of Conduct for United States Judges under Canon 3(A)(6), from commenting on the correctness of Supreme Court decisions. If confirmed, I will adhere to all binding Supreme Court and Second Circuit precedent.

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: In my current role as a New York State Court of Claims Judge and Acting Supreme Court Justice in Oneida County, as well as a judicial nominee for the Federal District Court in the Northern District of New York, I am precluded by the New York State Code of Judicial Conduct under Rule 100.3 (B)(8), and the Code of Conduct for United States Judges under Canon 3(A)(6), from commenting on the correctness of Supreme Court decisions. If confirmed, I will adhere to all binding Supreme Court and Second Circuit precedent.

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

Response: In my current role as a New York State Court of Claims Judge and Acting Supreme Court Justice in Oneida County, as well as a judicial nominee for the Federal District Court in the Northern District of New York, I am precluded by the New York State Code of Judicial Conduct under Rule 100.3 (B)(8), and the Code of Conduct for United States Judges under Canon 3(A)(6), from commenting on the correctness of Supreme Court decisions. If confirmed, I will adhere to all binding Supreme Court and Second Circuit precedent.

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

Response: When evaluating Second Amendment cases, I would follow the precedent set by the Supreme Court and Second Circuit to determine whether a regulation or statutory provision infringes upon Second Amendment rights, applying the legal analysis outlined in *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. 1 (2022), which held “the

standard for applying the Second Amendment is as follows: When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Id.* at 24.

39. 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, not to my knowledge.

40. 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, not to my knowledge.

41. **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: None.

- 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 to my knowledge.

- 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, not to my knowledge.

- 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 to my knowledge.

42. **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, not to my knowledge.

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

Response: No, not to my knowledge.

43. **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, not to my knowledge.

44. **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, not to my knowledge.

- 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: Not to my knowledge.

45. 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, not to my knowledge.

46. 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, not to my knowledge.

47. 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: I contacted Senator Charles Schumer’s and Senator Kirstin Gillibrand’s offices in early January 2022 to express my interest in being considered for any vacancies on the United States District Court for the Northern District of New York. On January 17, 2022, I forwarded Senator Gillibrand a letter and a resume reiterating my interest. In Spring 2022, I interviewed with staff from Senator Gillibrand’s office. In late March or early April 2024, I received a call from Senator Gillibrand’s office inquiring if I was still interested in being considered for any potential vacancies in the Northern District of New York. Shortly thereafter, I was told by Senator Gillibrand’s office that she intended to submit my name to the White House for consideration. On May 10, 2024, I was contacted by the White House Counsel’s Office to schedule an interview, which took place on May 14, 2024. On May 28, 2024, I was notified by the White House Counsel’s Office that I would be continuing the vetting process. Since that date, I have been in contact with

officials from the White House Counsel's Office and the Office of Legal Policy of the Department of Justice. On July 31, 2024, my nomination was submitted to the Senate.

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

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

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

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

- 50. During your selection process, did you talk with any officials from or anyone directly associated with Arabella Advisors, or did anyone do so on your behalf? If so, what was the nature of those discussions? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, the Hopewell Fund, the Windward Fund, the North Fund, or any other such Arabella dark-money fund that is still shrouded.**

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

- 51. During or leading up to your selection process did you talk with any officials from or anyone directly associated with the Open Society Foundations, or did anyone do so on your behalf? If so, what was the nature of those discussions?**

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

- 52. During or leading up to your selection process did you talk with any officials from or anyone directly associated with Fix the Court, or did anyone do so on your behalf? If so, what was the nature of those discussions?**

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

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

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

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

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

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

Response: No.

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

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

Response: On May 10, 2024, I was contacted by the White House Counsel's Office to schedule an interview, which took place on May 14, 2024. On May 28, 2024, I was notified by the White House Counsel's Office that I would be continuing the vetting process. Since that date, I have been in contact with officials from the White House Counsel's Office and the Office of Legal Policy of the Department of Justice. On July 31, 2024, my nomination was submitted to the Senate.

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

Response: I received written questions for the record on October 2, 2024. Upon receipt of these questions, I drafted my responses and sent them to Office of Legal Policy at the Department of Justice.

**Senate Judiciary Committee
Nominations Hearing
September 25, 2024
Questions for the Record
Senator Amy Klobuchar**

Question For Anthony J. Brindisi, to be a U.S. District Judge for the Northern District of New York

Your nomination has received bipartisan support from your local community including the Oneida County Board of Legislators which wrote a letter to the Committee in support of your nomination. The Board, which is composed of 17 Republicans and six Democrats, praised your “years of honorable service to the people of our state” and placed emphasis on “the strong bipartisan support” you have.

- In your view, what aspects of your record, performance, and demeanor has earned you the respect on both sides of the aisle and how will these qualities help you on the bench?**

Response: During my ten years as both a New York State Assemblyman and a U.S. Congressman, I focused on listening to all sides, collaborating across party lines, and finding common ground. This earned me respect from colleagues across the aisle. I advocated for policies that benefitted all my constituents, regardless of political affiliation, building trust and fostering productive relationships. Over the past two and a half years as a judge, I have applied these qualities to ensure impartiality, fairness, and a commitment to justice without bias or favoritism. Although I have served as a policymaker, I’ve had the privilege of serving in both the legislative and judicial branches of government, which gives me a unique perspective. I understand the fundamental difference between creating policy and being a neutral arbiter. As a judge, I have demonstrated the right temperament for the bench, treating all parties equally, listening carefully to each side, and ensuring fairness in my courtroom. This combination of experiences makes me particularly qualified to serve on the federal district court.

Senator Mike Lee
Questions for the Record
Anthony J. Brindisi to be United States District Judge for the Northern District of New York

1. How would you describe your judicial philosophy?

Response: As a judge in the New York State Court of Claims and an Acting Supreme Court Justice in Oneida County, my approach to each case is rooted in fairness, impartiality, and strong judicial temperament. I treat every case as the most important on my docket, recognizing the significant time and effort that lawyers and litigants invest in their preparations. I thoroughly review the facts and rigorously study the applicable law, entering the courtroom with an open mind, ready to listen to both sides without any preconceived notions. My demeanor is always courteous and patient, and I let the law and facts guide my decisions. When writing opinions, which is a frequent duty in my current role, I ensure that my rulings are clear, straightforward, and written in plain English, explaining not only the outcome but also the reasoning behind it.

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

Response: When deciding cases that involve federal statutory or constitutional interpretation, I would first check whether the Supreme Court or the Second Circuit had already interpreted the specific provision. If binding precedent exists, I would apply it to the case. If there is no precedent, I would begin by examining the plain or ordinary meaning of the text. If the meaning is clear from the text, the analysis ends there. However, if the text is ambiguous, I would turn to other circuits for persuasive authority, analyze the broader statutory construction to find similar terms or phrases, and search for analogous statutes with similar wording. I would then apply recognized canons of construction from the Supreme Court and Second Circuit. Where precedent allows, I would also consider legislative history to clarify the statute's meaning.

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

Response: See Response to 2 above.

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

Response: The Supreme Court has said in determining the scope of a statute, judges must start by looking to its language giving the words used their ordinary meaning. The text of the law (whether constitutional or statutory) is interpreted according to its ordinary meaning at the time of enactment. *See New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022).

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

Response: See Response to 2 above.

- 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: Based on Supreme Court precedent, it is my understanding that judges generally must interpret statutes by focusing on the ordinary public meaning of the words at the time they were enacted. *See, e.g., Bostock v. Clayton Cnty.*, 140 S. Ct. 1731 (2020).

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

Response: There are three constitutional requirements that constitute the "irreducible constitutional minimum of standing," as established by the Supreme Court in *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992). First, the plaintiff must have suffered an "injury in fact," which is an invasion of a legally protected interest that is concrete, particularized, and actual or imminent—not conjectural or hypothetical. Second, there must be a causal connection between the injury and the challenged action of the defendant, meaning the injury must be fairly traceable to the defendant’s conduct and not the result of independent actions by a third party. Finally, it must be likely, not merely speculative, that the injury will be redressed by a favorable judicial decision.

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

Response: The Constitution is a document of enumerated powers, but the Necessary and Proper Clause has been interpreted to give Congress the authority to enact laws that are necessary and proper to carry out its enumerated powers. This interpretation was established in *McCulloch v. Maryland*, 17 U.S. 316 (1819). In *McCulloch*, the Court ruled that the federal government had the authority to establish a federal bank and that states lacked the power to tax the federal government.

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 I am fortunate to be confirmed I would follow Supreme Court precedent. The Supreme Court has held: “The question of the constitutionality of action taken by Congress does not depend on recitals of the power which it undertakes to exercise.” *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 132 S. Ct. 2566, 2598 (2012).

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

Response: If confirmed, I will apply all relevant Supreme Court and Second Circuit precedent, including *Washington v. Glucksberg*, 521 U.S. 702 (1997), which established that unenumerated rights are constitutionally protected if they are "deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty."

10. What rights are protected under substantive due process?

Response: Substantive due process rights, protected under the Fifth and Fourteenth Amendments, protect fundamental rights in life, liberty, and property from arbitrary deprivation. These fundamental rights, while not specifically mentioned in the Constitution, derive from the Constitution and address matters such as marriage, procreation and family. Substantive due process rights, deeply rooted in the nation's history and tradition, ensure protection from unwarranted government interference. *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997).

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: The Supreme Court effectively overturned *Lochner v. New York* in *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937), holding that economic rights are "necessarily subject to the restraints of due process, and regulation which is reasonable in relation to its subject and is adopted in the interests of the community." *Id.* at 391. In *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022), the Supreme Court held that a right to an abortion is not protected by the Due Process Clause. If confirmed, I will apply all relevant Supreme Court and Second Circuit precedent involving substantive due process rights.

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

Response: Under the Commerce Clause, Congress has the power to regulate commerce among the states. Supreme Court precedent holds that Congress may regulate the channels of interstate commerce, the instrumentalities of interstate commerce and any activity that has a substantial relation to interstate commerce. *United States v. Lopez*, 514 U.S. 549, 558–59 (1995).

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

Response: The Supreme Court has identified the following classifications as suspect: race, national origin and alienage. *Students for Fair Admissions, Inc. v. President and*

Fellows of Harvard College and University of North Carolina, 143 S. Ct. 2141 (2023); *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: Our Constitution's structure relies heavily on the principles of checks and balances and separation of powers. This is to prevent any one branch of government from becoming more powerful than the others. Our system of checks and balances was designed to prevent abuses of power and ensure responsibility. For example, in *Marbury v. Madison*, 5 U.S. 137 (1803), the Supreme Court established the concept of judicial review, allowing the judiciary to check the constitutionality of laws passed by Congress.

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: In deciding a case in which one branch of government assumed an authority not granted it by the text of the Constitution, I would follow Supreme Court precedent set forth in *Youngstown Sheet & Tube Co. v. Sawyer*, 72 S. Ct. 863 (1952).

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

Response: When it comes to deciding cases, a judge's personal beliefs or sympathies should not play a role in a judge's consideration of the case. If I am fortunate to be confirmed, my judicial decisions will be based on the facts of the case and any binding precedent set forth by the Supreme Court and Second Circuit. However, it is my belief that judges should show patience and respect when interacting with the lawyers, litigants and court staff.

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

Response: Both outcomes are unacceptable, and it is the responsibility of judges to prevent either from occurring.

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 do not know what accounts for this change as I have not actively studied the historical trends of the Supreme Court. If confirmed, I will apply all relevant Supreme Court and Second Circuit precedent.

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

Response: Black’s Law Dictionary (12th ed. 2024) defines “judicial review” as the “court’s power to review the actions of other branches or levels of government.” Black’s Law Dictionary (12th ed. 2024) defines “judicial supremacy” as “[t]he doctrine that interpretations of the Constitution by the federal judiciary in the exercise of judicial review, esp. U.S. Supreme Court interpretations, are binding on the coordinate branches of the federal government and the states.”

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: In my current role as a New York State Court of Claims Judge and Acting Supreme Court Justice in Oneida County, as well as a judicial nominee for the Federal District Court in the Northern District of New York, I am prohibited by the New York State Code of Judicial Conduct under Rule 100.3 (B)(8) and the Code of Conduct for United States Judges under Canon 3(A)(6), from opining on how elected officials in the other branches of government should perform their jobs, as doing so may violate judicial impartiality and the separation of powers. Having said that, under our system of government, elected officials swear an oath to support and defend the Constitution. It is the role of the judiciary to interpret the Constitution and issue rulings that become legal precedent. Article V of the Constitution outlines the process for amending the Constitution if elected officials disagree with constitutional interpretations by the courts.

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: In Federalist 78, Hamilton emphasizes the proper role of a judge in our constitutional structure. Judges must interpret laws in accordance with the Constitution and they are bound to fairly and impartially apply the relevant law to the facts of each case and decide only properly presented cases and controversies within the meaning of Article III.

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: As a district court judge I would faithfully follow the binding precedents set by the Supreme Court and the Second Circuit. Determining if a precedent applies to a specific case depends on the particular facts and circumstances of the case. If confirmed, I would faithfully apply all binding precedent, without regard to my personal opinions or any past policy positions.

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: The defendant’s identity should not play a role. The U.S. Sentencing Guidelines make clear that a defendant’s “race, sex, national origin, creed, religion, and socio-economic status” are characteristics that “are not relevant in the determination of a sentence.” U.S.S.G. § 5H1.10 (2024).

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: Black’s Law Dictionary (12th ed. 2024) defines “equity” as “fairness; impartiality; evenhanded dealing.” I do not have a personal definition for the word “equity.” If I were confirmed, I would apply the precedent of the Supreme Court and the Second Circuit.

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

Response: Black’s Law Dictionary (12th ed. 2024) defines “equality” as “[t]he quality, state, or condition of being equal; esp., likeness in power or political status.” Like the word “equity” above, I do not have a personal definition for the word

“equality.” If I were confirmed, I would apply the precedent of the Supreme Court and the Second Circuit.

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’s Equal Protection Clause states that, “No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.” The Equal Protection Clause guarantees equality before the law, but I am not aware of any Supreme Court or Second Circuit precedent that explicitly guarantees “equity” as defined by the Biden Administration.

27. How do you define “systemic racism?”

Response: I do not have a personal definition of “systemic racism.” The dictionary definition of “systemic racism” is “the oppression of a racial group to the advantage of another as perpetuated by inequity within interconnected systems (such as political, economic, and social systems)” Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/systemic%20racism>. Accessed 9 Oct. 2024.

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

Response: I do not have a personal definition for “critical race theory.” Black's Law Dictionary (12th ed. 2024) defines the phrase 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: See Responses to 27 and 28 above.

30. When you were a State legislator, what process did you undertake in deciding to join a piece of legislation? And, to what extent, if any, did you consider the State and Federal constitutionality of proposed legislation that you authored or joined?

Response: As a legislator in the State Assembly, my decision to support or sponsor legislation varied based on the specific issue. I sought extensive feedback from my constituents to craft legislation that would benefit the people in the district I represented. I followed a general policy of not co-sponsoring legislation unless it had bipartisan support. Several factors influenced my decision to author or join proposed legislation, and I always placed significant emphasis on the bill's constitutionality, both at the state and federal levels. For the past two and a half years, I have served as a judge, and I fully understand that the role of a judge is fundamentally different from

that of a legislator. As a judge, my responsibility is to act as a neutral arbiter. If confirmed as a district court judge, I assure you that my past policy positions will have no impact on my ability to be fair, impartial, and neutral.

- 31. In your time in the New York Assembly, did you author any piece of legislation that was later ruled to be unconstitutional under the State or Federal Constitutions?**

Response: Not to my knowledge.

- 32. When you were a Congressman, what process did you undertake in deciding to join a piece of legislation? And, to what extent, if any, did you consider the constitutionality of proposed legislation that you authored or joined?**

Response: As a legislator in the House of Representatives, my decision to support or sponsor legislation varied based on the specific issue. I sought extensive feedback from my constituents to craft legislation that would benefit the people in the district I represented. I followed a general policy of not co-sponsoring legislation unless it had bipartisan support. Several factors influenced my decision to author or join proposed legislation, and I always placed significant emphasis on the bill's constitutionality, both at the state and federal levels. For the past two and a half years, I have served as a judge, and I fully understand that the role of a judge is fundamentally different from that of a legislator. As a judge, my responsibility is to act as a neutral arbiter. If confirmed as a district court judge, I assure you that my past policy positions will have no impact on my ability to be fair, impartial, and neutral.

- 33. How does the role of a judge differ from the role of a Congressman in ensuring only constitutional laws are executed by the Executive Branch?**

Response: The role of a judge differs significantly from that of a congressman in ensuring that only constitutional laws are executed by the Executive Branch. In my former role as a congressman I participated in drafting, debating, and passing laws, ensuring that those laws comply with the Constitution. In my current role as a judge, I no longer create laws but review and interpret laws brought before me. I apply precedents without regard to personal beliefs or political pressures and without regard to my past policy positions. If I am fortunate to be confirmed as a federal judge, my duties will include ensuring laws are implemented and enforced according to the Constitution and should the issue come before, including those that are executed by the Executive Branch.

SENATOR TED CRUZ

U.S. Senate Committee on the Judiciary

Questions for the Record for Anthony Joseph Brindisi nominated to serve as U.S. District Judge for the Northern District of New York

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: In my current role as a New York State Court of Claims Judge and Acting Supreme Court Justice in Oneida County, as well as a judicial nominee for the Federal District Court in the Northern District of New York I am prohibited from commenting on matters that may come before me. If confirmed, I will apply all relevant Supreme Court and Second Circuit precedent, including *Washington v. Glucksberg*, 521 U.S. 702 (1997), which established that unenumerated rights are constitutionally protected if they are “deeply rooted in this Nation’s history and tradition” and “implicit in the concept of ordered liberty.” My personal views or past policy positions would play no role in my review.

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: As a judge in the New York State Court of Claims and an Acting Supreme Court Justice in Oneida County, my approach to each case is rooted in fairness, impartiality, and strong judicial temperament. I treat every case as the most important on my docket, recognizing the significant time and effort that lawyers and litigants invest in their preparations. I thoroughly review the facts and rigorously study the applicable law, entering the courtroom with an open mind, ready to listen to both sides without any preconceived notions. My demeanor is always courteous and patient, and I let the law and facts guide my decisions. When writing opinions, which is a frequent duty in my current role, I ensure that my rulings are clear, straightforward, and written in plain English, explaining not only the outcome but also the reasoning behind it. I have not extensively analyzed the judicial philosophies of all justices, so I cannot say definitively which justice's philosophy aligns most closely with my own.

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

Response: Black’s Law Dictionary (12th ed. 2014) defines "originalism" as the doctrine that "the words of a legal instrument are to be given the meanings they had when they were adopted." While I do not adhere to any specific ideology of textual interpretation, I recognize that the Supreme Court has applied originalism in its rulings. If confirmed as a District Court Judge, I will adhere to Supreme Court and Second Circuit precedents.

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 (12th ed. 2024) 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 adhere to any specific ideology of textual interpretation. If confirmed, I would rely on applicable Supreme Court and Second Circuit precedent when interpreting a constitutional provision to decide a case.

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: If confirmed as a District Court Judge and faced with a constitutional issue of first impression without binding precedent, and if the original public meaning of the Constitution is clear and resolves the issue, I would be bound by that plain and ordinary meaning and apply the text of the Constitution to the case before me.

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: If confirmed as a District Court Judge, I will follow binding Supreme Court and Second Circuit precedent in interpreting the Constitution. When evaluating a constitutional provision, the text and its original meaning should be considered first. The Supreme Court affirmed in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022), that the meaning of the Constitution is fixed unless altered through the Article V amendment process. However, the Court has also recognized that some constitutional interpretations must reflect evolving standards, such as the Eighth Amendment’s prohibition on cruel and unusual punishment, which should be assessed in light of current social norms (*Atkins v. Virginia*, 536 U.S. 304, 311 (2002)).

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

Response: No. Changes to the Constitution can only be made through the amendment process established in Article V.

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

Response: Yes. *Dobbs* is settled law.

a. Was it correctly decided?

Response: In my current role as a New York State Court of Claims Judge and Acting Supreme Court Justice in Oneida County, as well as a judicial nominee for the Federal District Court in the Northern District of New York, I am precluded by the New York State Code of Judicial Conduct and the Code of Conduct for United States Judges from commenting on whether a Supreme Court case was correctly decided. If confirmed, I will adhere to all binding Supreme Court and Second Circuit precedent.

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

Response: Yes, *Cooper* is settled law.

a. Was it correctly decided?

Response: In my current role as a New York State Court of Claims Judge and Acting Supreme Court Justice in Oneida County, as well as a judicial nominee for the Federal District Court in the Northern District of New York, I am precluded by the New York State Code of Judicial Conduct under Rule 100.3 (B)(8) and the Code of Conduct for United States Judges under Canon 3(A)(6), from commenting on whether a Supreme Court case was correctly decided. If confirmed, I will adhere to all binding Supreme Court and Second Circuit precedent.

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

Response: Yes, *New York Rifle & Pistol Association* is settled law.

a. Was it correctly decided?

Response: In my current role as a New York State Court of Claims Judge and Acting Supreme Court Justice in Oneida County, as well as a judicial nominee for the Federal District Court in the Northern District of New York, I am precluded by the New York State Code of Judicial Conduct under Rule 100.3 (B)(8) and the Code of Conduct for United States Judges under Canon 3(A)(6), from commenting on whether a Supreme Court case was correctly decided. If confirmed, I will adhere to all binding Supreme Court and Second Circuit precedent.

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

Response: Yes, *Brown* is settled law.

a. Was it correctly decided?

Response: In my current role as a New York State Court of Claims Judge and

Acting Supreme Court Justice in Oneida County, as well as a judicial nominee for the Federal District Court in the Northern District of New York, I am precluded by the New York State Code of Judicial Conduct under Rule 100.3 (B)(8) and the Code of Conduct for United States Judges under Canon 3(A)(6), from commenting on whether a Supreme Court case was correctly decided. If confirmed, I will adhere to all binding Supreme Court and Second Circuit precedent. Consistent with the practice of prior judicial nominees, I acknowledge that *Brown v. Board of Education* falls within a small category of cases so unlikely to be relitigated that I can state it was correctly decided.

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

Response: Yes, *Students for Fair Admissions* is settled law.

a. Was it correctly decided?

Response: In my current role as a New York State Court of Claims Judge and Acting Supreme Court Justice in Oneida County, as well as a judicial nominee for the Federal District Court in the Northern District of New York, I am precluded by the New York State Code of Judicial Conduct under Rule 100.3 (B)(8) and the Code of Conduct for United States Judges under Canon 3(A)(6), from commenting on whether a Supreme Court case was correctly decided. If confirmed, I will adhere to all binding Supreme Court and Second Circuit precedent.

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

Response: Yes, *Gibbons* is settled law.

a. Was it correctly decided?

Response: In my current role as a New York State Court of Claims Judge and Acting Supreme Court Justice in Oneida County, as well as a judicial nominee for the Federal District Court in the Northern District of New York, I am precluded by the New York State Code of Judicial Conduct under Rule 100.3 (B)(8) and the Code of Conduct for United States Judges under Canon 3(A)(6), from commenting on whether a Supreme Court case was correctly decided. If confirmed, I will adhere to all binding Supreme Court and Second Circuit precedent.

15. Is the Supreme Court's ruling in *Loper Bright Enterprises v. Raimondo* settled law?

Response: Yes, *Loper Bright* is settled law.

a. Was it correctly decided?

Response: In my current role as a New York State Court of Claims Judge and

Acting Supreme Court Justice in Oneida County, as well as a judicial nominee for the Federal District Court in the Northern District of New York, I am precluded by the New York State Code of Judicial Conduct under Rule 100.3 (B)(8) and the Code of Conduct for United States Judges under Canon 3(A)(6), from commenting on whether a Supreme Court case was correctly decided. If confirmed, I will adhere to all binding Supreme Court and Second Circuit precedent.

16. Is it appropriate for courts to defer to an agency interpretation of a law when a statute is ambiguous?

Response: In *Loper Bright Enterprises v. Raimondo*, the Supreme Court addressed whether courts should defer to an administrative agency's interpretation of a statute, revisiting the principle of *Chevron* deference. Established in *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), *Chevron* deference allowed courts to defer to an agency's reasonable interpretation of ambiguous statutes they administer. In *Loper Bright*, the Court overruled the doctrine of *Chevron* deference holding that courts “must exercise their independent judgment in deciding whether an agency has acted within its statutory authority.” If confirmed, I will adhere to all binding Supreme Court and Second Circuit precedent.

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

Response: The sort of offenses triggering a presumption in favor of pretrial detention in the federal criminal system are outlined in 18 U.S.C. § 3142(e) and include certain drug offenses, unlawful firearm offenses, certain terrorism offenses, offenses involving minor victims and offenses involving human trafficking.

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

Response: According to 18 U.S.C. § 3142(e)(3), 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,” the person shall be detained before trial. If confirmed, I will adhere to all applicable laws enacted by the legislature as well as all binding Supreme Court and Second Circuit precedent.

18. 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. There are identifiable limits to what the government may impose or may require of private institutions. Under the Religious Freedom Restoration Act (RFRA) and the Free Exercise Clause of the First Amendment the government is limited from interfering with the personal and organizational exercise of religious freedom. For example, in *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014),

the Supreme Court held under the RFRA, a for-profit corporation was entitled to invoke an exemption in the Affordable Care Act if the religious employer objected to providing contraceptive services. In more recent cases such *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023), and *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 584 U.S. 617 (2018), the Court prohibited the state from compelling individuals to express messages contrary to their religious beliefs.

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

Response: Generally, no. Government action that discriminates against religious organizations or religious people must survive strict scrutiny analysis. See *Tandon v. Newsom*, 593 U.S. 61 (2021).

20. Explain your understanding of the U.S. Supreme Court’s holding and reasoning in *Tandon v. Newsom*.

Response: In *Tandon v. Newsom*, the Court issued a per curiam opinion granting the application of the petitioners to enjoin the enforcement of the State of California’s restrictions adopted during the COVID-19 pandemic which put limitations on at home religious gatherings to persons from no more than three households. The Court held that California’s restrictions on religious gatherings in homes violated the Free Exercise Clause of the First Amendment. The Court reasoned that California treated religious activities less favorably than comparable secular activities.

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

Response: Yes.

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

Response: In *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, an owner of a cakeshop sought review of the Colorado Civil Rights Commission’s decision in a proceeding stemming from the shop owner’s refusal to sell a wedding cake to a same-sex couple, requiring the owner not to violate Colorado’s Anti-Discrimination Act by discriminating against potential customers based on their sexual orientation. The Court held that the Colorado Civil Rights Commission did not comply with the Free Exercise Clause’s requirement of religious neutrality. In addition, the Supreme Court stated that the cakeshop owner was entitled to a neutral and respectful consideration of his religious reasons for refusal to make the cake and concluded that the Colorado Civil Rights Commission violated the state’s duty under the First Amendment not to use hostility towards religion or sincere religious beliefs.

23. Explain your understanding of the U.S. Supreme Court’s holding and reasoning in

303 Creative LLC v. Elenis.

Response: In *303 Creative LLC v. Elenis*, the Supreme Court addressed whether a website designer could refuse to create wedding websites for same-sex couples based on First Amendment grounds. The Court held that the First Amendment prohibits the state from compelling a website designer to create expressive content that conveys messages with which the designer disagrees. The ruling affirmed that the state cannot force individuals to engage in speech or creative expression that conflicts with their personal beliefs, thus protecting the designer's right to decline services that endorse messages inconsistent with sincere religious beliefs that marriage should be between a man and a woman.

24. 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. Religious beliefs are protected under the First Amendment. It is Supreme Court precedent that sincerely held religious beliefs are protected by the Free Exercise Clause. *Frazee v. Illinois Dep't of Emp. Sec.*, 489 U.S. 829 (1989); *Burwell v. Hobby Lobby Stores*, 573 U.S. 682 (2014). Furthermore, it is not within the judicial function to determine whether religious beliefs asserted are reasonable or pursuant to the commands of any particular religion. *Thomas v. Review Board of Indiana Employment Security Div.*, 45 U.S. 707 (1981).

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

Response: Yes. See response to Question 24 above.

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

Response: See response to Question 24 above.

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

Response: I do not understand this to be the official position of the Catholic Church.

25. 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 U.S. Supreme 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 addressed the scope of the ministerial exception, which prohibits employment discrimination lawsuits against religious organizations by employees performing religious functions. The Court held that the ministerial exception, grounded in the First Amendment's Establishment and Free Exercise Clauses, applies to lay teachers at private religious schools because their job duties included educating and guiding students in the Catholic faith.

26. **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 your understanding of the U.S. Supreme Court's holding and reasoning in the case.**

Response: In *Fulton v. City of Philadelphia*, 593 U.S. 522 (2021), the Supreme Court held that Philadelphia's decision to terminate a contract with Catholic Social Services unless they agreed to certify same-sex couples as foster parents, violated the Free Exercise Clause of the First Amendment. The Court reasoned that Philadelphia's non-discrimination policy was not neutral or generally applicable because the policy allowed the Commissioner to make discretionary exceptions. The Court applied strict scrutiny analysis and determined that the City's policy unduly burdened the free exercise of religion and was not narrowly tailored to achieve a compelling government interest.

27. **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 U.S. Supreme 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 for private schools, which included a nonsectarian requirement, did not survive strict scrutiny analysis and violated the Free Exercise Clause because it denied assistance to parents who sent their children to private religious schools. The Court reasoned that Maine violated the Free Exercise Clause by providing a public benefit while excluding religious schools solely due to their religious nature.

28. **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 held that the school district violated a football coach's First Amendment rights by terminating him for engaging in a quiet, personal prayer on the football field after games. The Court determined that Kennedy's prayers constituted private religious expression protected under both the Free Exercise and Free Speech Clauses. The Court applied strict scrutiny and found that the school district's actions were not justified by a compelling government interest.

29. **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 County adopted an ordinance requiring most homes to have a modern septic system for the disposal of gray water. An Amish community filed a declaratory judgment suit in state court against the County, alleging that the septic-system mandate violated the federal Religious Land Use and Institutionalized Persons Act (RLUIPA). Justice Gorsuch in his concurrence criticized the County for assuming a compelling interest in enforcing sanitation regulations without analyzing the specific application to the Amish community. Justice Gorsuch stated that the Supreme Court decision in *Fulton v. City of Philadelphia*, 593 U.S. 522 (2021) makes clear that RLUIPA requires application of strict scrutiny analysis. Justice Gorsuch stated “RLUIPA prohibits governments from infringing sincerely held religious beliefs and practices except as a last resort.”

30. **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 my current role as a New York State Court of Claims Judge and Acting Supreme Court Justice in Oneida County, as well as a judicial nominee for the Federal District Court in the Northern District of New York, I am precluded by the New York State Code of Judicial Conduct under Rule 100.3 (B)(8) and the Code of Conduct for United States Judges under Canon 3(A)(6), from commenting on the application of this statute to factual situations that may come before me. If I am confirmed as a district court judge, I would follow all Supreme Court precedent including *Cox v. Louisiana*, 379 U.S. 559 (1965), where the Supreme Court upheld a state statute based on 18 U.S.C. § 1507.

31. **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.

32. 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.

33. 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.

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

Response: In my current role as a New York State Court of Claims Judge and Acting Supreme Court Justice in Oneida County, as well as a judicial nominee for the Federal District Court in the Northern District of New York, I am precluded by the New York State Code of Judicial Conduct under Rule 100.3 (B)(8) and the Code of Conduct for United States Judges under Canon 3(A)(6), from commenting on the appropriateness of a political determination. If confirmed, I would follow binding Supreme Court and Second Circuit precedent in any case presenting this issue.

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

Response: If the issue of a program or policy with a racially disparate outcome came before me, I would follow Supreme Court precedent set forth in *Ricci v. DeStefano*, 557 U.S. 557 (2009) and *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252 (1977), which held that a racially disproportionate outcome may serve as evidence of discrimination; however, merely demonstrating disparate impact is insufficient to prove a violation of the Equal Protection Clause.

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

Response: In my current role as a New York State Court of Claims Judge and Acting Supreme Court Justice in Oneida County, as well as a judicial nominee for the Federal District Court in the Northern District of New York, I am precluded by the New York State Code of Judicial Conduct under Rule 100.3 (B)(8) and the Code of Conduct for

United States Judges under Canon 3(A)(6), from commenting on policy matters. This is an issue that is decided by Congress. If confirmed, I would follow binding Supreme Court and Second Circuit precedent in any case presenting this issue.

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

Response: No.

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

Response: Supreme Court precedent holds that the original public meaning of the Second Amendment protects the right of an individual to keep and bear arms for lawful purposes such as self-defense inside and outside of the home. *New York Rifle & Pistol Association, Inc., v. Bruen*, 597 U.S. 1 (2022); *District of Columbia v. Heller*, 554 U.S. 570 (2008).

39. **Explain your understanding of Justice Thomas’s dissent in the U.S. Supreme Court’s decision in *United States v. Rahimi*.**

Response: At issue in *United States v. Rahimi*, was 18 U. S. C. §922(g)(8), a federal statute that prohibits individuals subject to a domestic violence restraining order from possessing a firearm. The majority upheld the statute. Justice Thomas dissented reasoning that the statute violated the plain text of the Second Amendment and was not consistent with the historical tradition of firearm regulation in our nation.

40. **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*, *New York State Rifle & Pistol Association v. Bruen*, and *United States v. Rahimi*?**

Response: When evaluating Second Amendment cases, I would follow the precedent set by the Supreme Court to determine whether a regulation or statutory provision infringes upon Second Amendment rights, applying the legal analysis outlined in *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. 1 (2022). In *New York State Rifle & Pistol Association v. Bruen*, the Supreme Court held “the standard for applying the Second Amendment is as follows: When the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.” *Id.* at 24. If confirmed, I would adhere to binding Supreme Court precedent set forth in *United States v. Heller*, *McDonald v. Chicago*, *New York State Rifle and Pistol Association v. Bruen* and *United States v. Rahimi* in any case presenting this issue.

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

Response: Yes.

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

Response: No.

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

Response: No. 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.

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

Response: In my current role as a New York State Court of Claims Judge and Acting Supreme Court Justice in Oneida County, as well as a judicial nominee for the Federal District Court in the Northern District of New York, I am precluded by the New York State Code of Judicial Conduct under Rule 100.3 (B)(8) and the Code of Conduct for United States Judges under Canon 3(A)(6), from commenting on it would be inappropriate to comment prematurely on issues or questions in hypothetical situations that could potentially come before the court. Under Article II, the President holds the executive power of the government, is sworn to faithfully execute the office, and is committed to protecting and defending the Constitution. If confirmed, I would follow binding Supreme Court and Second Circuit precedent.

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

Response: Black’s Law Dictionary (12th ed. 2024) defines the term “prosecutorial discretion” 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.” Black’s Law Dictionary (12th ed. 2024) defines an “administrative rule” as “[a]n officially promulgated agency regulation that has the force of law.” It is my understanding that a substantive administrative rule change is governed by the Administrative Procedure Act, which agencies must follow when changing regulations.

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

Response: No.

47. **Explain your understanding of 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*, 594 U.S. 758 (2021) the Court held that the Centers for Disease Control and Prevention (CDC) lacked the statutory authority under the Public Health Service Act to impose a nationwide eviction moratorium during the COVID-19 pandemic. The Court reasoned that for a nationwide eviction moratorium to be extended, explicit authorization from Congress was required.

48. **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 to be appropriate.

49. **Explain your understanding of the U.S. Supreme Court’s holding and reasoning in *Trump v. United States*.**

Response: In *Trump v. United States*, the Court concluded that separation of powers principles dictate that former President Trump has at least a presumptive immunity from criminal prosecution for official actions and absolute immunity from criminal liability for conduct within his exclusive sphere of constitutional authority.

50. **At your Nomination Hearing on September 25, 2024, you said that “during [your] time being a legislator in the House of Representatives, [you] sponsored thousands of pieces of legislation.” You were a Congressman for two years. Did you in fact sponsor thousands of bills?**

Response: During my Nomination Hearing I misspoke. I intended to say that during my ten years serving as both a legislator in the New York State Assembly and United States House of Representatives, I sponsored, co-sponsored or multi-sponsored over one thousand pieces of legislation.

51. **During your two years as a Congressman, how many pieces of legislation did you sponsor or cosponsor?**

Response: Approximately 113.

52. **During your two years as a Congressman, did you cosponsor and vote for H.R. 5, the “Equality Act”?**

Response: Yes.

53. **If yes, how many years has it been since you cosponsored and voted for the “Equality Act”?**

Response: Approximately four years.

54. **As a legislator at the time, what was your thought process and reasoning that resulted in your support and co-sponsorship of the “Equality Act?”**

Response: It has been over four years since I co-sponsored this legislation, and I do not recall every specific detail of my reasoning at that time. However, a review of some of my public statements from around that time indicate that my decision was motivated in part by prohibiting discrimination based on sex, sexual orientation, and gender identity. The *Bostock v. Clayton County* decision, issued by the U.S. Supreme Court in 2020, held that Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination “because of sex,” also protects employees against discrimination based on sexual orientation and gender identity. My general policy as a legislator in the House of Representatives was to not co-sponsor any legislation that was not bipartisan, and the fact that the Equality Act had bipartisan support likely played a role in my decision to sponsor it. For the past two and a half years, I have served as a judge in the New York State Court of Claims, and I fully understand that the role of a judge is fundamentally different from that of a policymaker, requiring me to act as a neutral arbiter. If confirmed as a district court judge, I assure you that my past policy positions will in no way affect my ability to be fair, impartial, and neutral.

55. **Did you read the text of the Equality Act at any time before you cosponsored or voted for it?**

Response: Yes.

56. **Do you believe that a legislator should read the text of a statute before cosponsoring or voting for it?**

Response: Yes.

57. **If you believe that a legislator should read the text of a statute before cosponsoring or voting for it, please explain why. If not, please explain why not.**

Response: It is important for legislators to read bills before voting on them to ensure they understand the content of the legislation they are supporting or opposing.

58. **Do you believe that a judge should read the text of a statute when the case before him clearly implicates that statute?**

Response: Yes.

59. **If you believe that a judge should read the text of a statute when the case before him clearly implicates that statute, please explain why. If not, please explain why not.**

Response: It is important for a judge to read the text of a statute when a case clearly involves that statute. Supreme Court precedent dictates that judges must first look to the plain meaning of a statute's language when interpreting a statute and if the language is

clear and unambiguous, the Court typically follows the plain meaning without further interpretation.

60. Did you speak with the White House about H.R. 5, the so-called “Equality Act” in preparation for your Nomination Hearing on September 25, 2024?

Response: In preparing for my Nomination Hearing, preparation sessions covered a great many topics including bills I sponsored in the House, such as H.R. 5.

61. Are you aware that H.R. 5, the so-called “Equality Act,” would take away the right of women and girls to insist that only women can:

a. Perform security pat-downs or strip searches?

Response: My understanding is that the Equality Act is currently pending in Congress, and if it passes and becomes law, it may face various challenges in federal court. Should I be fortunate enough to be confirmed as a district court judge, I may be called upon to review the statutory language of this legislation. In my current role as a New York State Court of Claims Judge and Acting Supreme Court Justice in Oneida County, as well as a judicial nominee for the Federal District Court in the Northern District of New York, I am precluded by the New York State Code of Judicial Conduct under Rule 100.3 (B)(8) and the Code of Conduct for United States Judges under Canon 3(A)(6), from commenting prematurely on issues or questions that could potentially come before the court. If confirmed, I would follow binding Supreme Court and Second Circuit precedent in any case presenting this issue. My personal views or past policy positions would play no role in my review.

b. Supervise locker rooms or shared showers?

Response: Please see response to 61(a) above.

c. Handle intimate care for hospital and long-term care patients?

Response: Please see response to 61(a) above.

d. Supervise children on overnight trips?

Response: Please see response to 61(a) above.

62. Are you aware that H.R. 5, the so-called “Equality Act,” prohibits men from being denied access to shared facilities, such as:

a. A women’s multi-stall bathroom?

Response: Please see response to 61(a) above.

b. A women's shared hospital room?

Response: Please see response to 61(a) above.

c. A women's locker rooms with group showers?

Response: Please see response to 61(a) above.

63. Are you aware that H.R. 5, the so-called "Equality Act," would end sports programs and scholarships set aside for women and girls seeking to pursue their passions and afford educational opportunities?

Response: Please see response to 61(a) above.

64. Are you aware that H.R. 5, the so-called "Equality Act," would crowd women out from female athletics by forcing women to compete against biological males who identify as female?

Response: Please see response to 61(a) above.

65. Do you believe that women have a right to be free from harassment by biological men unclothing themselves in front of them?

Response: Matters concerning privacy, harassment, and the rights of individuals are governed by the Constitution, statutory law, and judicial precedent. If confirmed, I would review the particular facts of the case, and I would follow binding Supreme Court and Second Circuit precedent in any case presenting this issue. In my current role as a New York State Court of Claims Judge and Acting Supreme Court Justice in Oneida County, as well as a judicial nominee for the Federal District Court in the Northern District of New York, I am precluded by the New York State Code of Judicial Conduct under Rule 100.3 (B)(8) and the Code of Conduct for United States Judges under Canon 3(A)(6), from commenting on my personal beliefs or commenting prematurely on issues or questions that could potentially come before the court.

66. Do you think that women in women's prisons have a right to not have a cellmate who is a 6'2" biological male and serial rapist?

Response: Matters concerning privacy, harassment, and the rights of individuals are governed by the Constitution, statutory law, and judicial precedent. If confirmed, I would review the particular facts of the case, and I would follow binding Supreme Court and Second Circuit precedent in any case presenting this issue. In my current role as a New York State Court of Claims Judge and Acting Supreme Court Justice in Oneida County, as well as a judicial nominee for the Federal District Court in the Northern District of New York, I am precluded by the New York State Code of Judicial Conduct under Rule

100.3 (B)(8) and the Code of Conduct for United States Judges under Canon 3(A)(6), from commenting on my personal beliefs or commenting prematurely on issues or questions that could potentially come before the court.

67. **Did you cosponsor and vote for H.R. 5038, the “Farm Workforce Modernization Act”?**

Response: Yes.

68. **As a legislator at the time, what was your thought process and reasoning that resulted in your support and co-sponsorship of the “Farm Workforce Modernization Act”?**

Response: It has been over four years since I co-sponsored this legislation, and I do not recall every specific detail of my reasoning at that time. However, a review of some of my public statements around that time indicate that I was motivated in part by feedback from dairy farmers within my former congressional district who expressed concerns to me that a tightening agricultural labor market was making it harder for them to meet their labor needs. My general policy as a legislator in the House of Representatives was to not vote for any legislation that was not bipartisan, and the fact that this bill had broad bipartisan support likely played a role in my decision to co-sponsor it. For the past two and a half years, I have served as a judge in the New York State Court of Claims, and I fully understand that the role of a judge is fundamentally different from that of a policymaker, requiring me to act as a neutral arbiter. If confirmed as a district court judge, I assure you that my past policy positions will in no way affect my ability to be fair, impartial, and neutral.

69. **Did you read the text of H.R. 5038, the “Farm Workforce Modernization Act” at any time before you cosponsored or voted for it?**

Response: Yes.

70. **Are you aware that H.R. 5038, the “Farm Workforce Modernization Act,” creates a new “certified agricultural worker” status for which only illegal alien agricultural workers would be eligible?**

Response: According to the bill summary for H.R. 5038, the “Farm Workforce Modernization Act” establishes eligibility criteria related to alien farmworkers, including a provision establishing a certified agricultural worker status and changing the H-2A temporary worker program. If this bill were to pass Congress and be signed into law it may be subject to various legal challenges. If confirmed as a district court judge, my responsibility would be to interpret and apply the law as it is written. In my current role as a New York State Court of Claims Judge and Acting Supreme Court Justice in Oneida County, as well as a judicial nominee for the Federal District Court in the Northern District of New York, I am precluded by the New York State Code of Judicial Conduct under Rule 100.3 (B)(8) and the Code of Conduct for United States

Judges under Canon 3(A)(6), from commenting prematurely on issues or questions that could potentially come before the court. If confirmed, I would follow binding Supreme Court and Second Circuit precedent in any case presenting this issue. My personal views and past policy positions would play no role in my review.

71. **Are you aware that H.R. 5038, the “Farm Workforce Modernization Act” creates a pathway to citizenship for those illegal alien agricultural workers labelled “certified agricultural workers,” and their families, by giving them the opportunity to become lawful permanent residents?**

Response: See response to 70 above.

72. **Did you vote in favor of H.R. 6, the “American Dream and Promise Act”?**

Response: Yes.

73. **As a legislator at the time, what was your thought process and reasoning that resulted in your support for the “American Dream and Promise Act?”**

Response: It has been approximately four years since I voted for this legislation, and I do not recall every specific detail of my reasoning at that time. However, a review of some of my public statements around that time indicate that I was motivated in part by finding bipartisan solutions towards comprehensive immigration reform. My general policy as a legislator in the House of Representatives was to not vote for any legislation that did not have bipartisan support, and the fact that this bill had that support likely played a role in my decision to vote for it. For the past two and a half years, I have served as a judge in the New York State Court of Claims, and I fully understand that the role of a judge is fundamentally different from that of a policymaker, requiring me to act as a neutral arbiter. If confirmed as a district court judge, I assure you that my past policy positions will in no way affect my ability to be fair, impartial, and neutral.

74. **Did you read the text of H.R. 6, the “American Dream and Promise Act” at any time before you voted for it?**

Response: Yes.

75. **Are you aware that the H.R. 6, the “American Dream and Promise Act,” would codify the Obama administration’s unconstitutional Deferred Action for Childhood Arrivals (DACA) amnesty program, allowing illegal aliens, known as Dreamers, to permanently avoid deportation and obtain a pathway to citizenship?**

Response: According to the bill summary for H.R. 6, the “American Dream and Promise Act,” the bill cancels and prohibits removal proceedings against certain aliens and provides such aliens with a path toward permanent resident status. If this bill were to pass Congress and be signed into law it may be subject to various legal challenges. If confirmed as a district court judge, my responsibility would be to interpret and apply

the law as it is written. In my current role as a New York State Court of Claims Judge and Acting Supreme Court Justice in Oneida County, as well as a judicial nominee for the Federal District Court in the Northern District of New York, I am precluded by the New York State Code of Judicial Conduct under Rule 100.3 (B)(8) and the Code of Conduct for United States Judges under Canon 3(A)(6), from commenting prematurely on issues or questions that could potentially come before the court. If confirmed, I would follow binding Supreme Court and Second Circuit precedent in any case presenting this issue. My personal views and past policy positions would play no role in my review.

76. **Given that you voted in favor of giving illegal aliens amnesty, would you recuse yourself in cases involving the deportation of illegal aliens?**

Response: If I am fortunate to be confirmed as a district court judge I will follow the guidelines set forth in 28 U.S.C. § 455 in any cases in which my impartiality might reasonably be questioned requiring recusal. Additionally, for the past two and a half years, I have served as a judge in the New York State Court of Claims, and I fully understand that the role of a judge is fundamentally different from that of a policymaker, requiring me to act as a neutral arbiter. If confirmed as a district court judge, I assure you that my past policy positions will in no way affect my ability to be fair, impartial, and neutral.

77. **Did you cosponsor and vote for N.Y. A04311A, the “New York State DREAM Act?”**

Response: Yes.

78. **As a legislator at the time, what was your thought process and reasoning that resulted in your support for the “New York State DREAM Act?”**

Response: It has been approximately six years since I voted for this legislation, and I do not recall every specific detail of my reasoning at that time. However, a review of some of my public statements around that time indicate that I was motivated in part by helping young people access a college education. This bill was similar to laws already passed in Texas, New Mexico, California and other states. For the past two and a half years, I have served as a judge in the New York State Court of Claims, and I fully understand that the role of a judge is fundamentally different from that of a policymaker, requiring me to act as a neutral arbiter. If confirmed as a district court judge, I assure you that my past policy positions will in no way affect my ability to be fair, impartial, and neutral.

79. **Did you read the text of N.Y. A04311A, the “New York State DREAM Act” at any time before you cosponsored or voted for it?**

Response: Yes.

80. **If you did not, why do you plan to read the text of statutes as a judge when interpreting the law, if you did not read the text of statutes as a legislator when**

writing that law?

Response: See response to 79 above.

81. **Are you aware that N.Y. A04311A, the “New York State DREAM Act,” allows illegal immigrants to receive taxpayer-funded college scholarships?**

Response: I am aware that the “New York State Dream Act” allows eligible undocumented students to access financial aid, which is similar to laws in Texas, New Mexico, California and other states.

82. **Did you received \$10,000 in donations in 2020 from the American Association for Justice, a trial lawyer lobby that is pushing to end qualified immunity?**

Response: I believe during my time as a member of the United States House of Representatives the American Association for Justice donated approximately \$10,000 to my campaign. I am not aware of their position on qualified immunity.

83. **Is your father, Louis Brindisi, a founder of Brindisi, Murad, & Brindisi Pearlman, a law firm that specializes in personal injury services?**

Response: Yes.

84. **Are you aware that personal injury law firms overwhelmingly seek the end of qualified immunity in order to benefit professionally and financially?**

Response: Black’s Law Dictionary (12th ed. 2014) defines qualified immunity as “immunity from civil liability for a public official who is performing a discretionary function, as long as the conduct does not violate clearly establish constitutional or statutory rights.” For the past two and a half years I have been serving as a judge in the New York State Court of Claims and the past ten months as an Acting Supreme Court Justice in Oneida County. I have not practiced personal injury law since 2022, and am not aware of the position of “personal injury law firms” on the issue of ending qualified immunity in order to benefit professionally and financially.

85. **Did you vote for H.R. 7120, the “George Floyd Justice in Policing Act”?**

Response: Yes.

86. **As a legislator at the time, what was your thought process and reasoning that resulted in your support for the “George Floyd Justice in Policing Act?”**

Response: It has been approximately four years since I voted for this legislation, and I do not recall every specific detail of my reasoning at that time. However, a review of some of my public statements around that time indicates that I was motivated in part by finding bipartisan solutions towards improving relations between law enforcement and the

communities they serve and protect. Further review of my public statements at that time reveals that although I was not in favor of ending qualified immunity, I was hoping the House and Senate could find a compromise on police reform legislation. My general policy as a legislator in the House of Representatives was to not vote for any legislation that did not have bipartisan support, and the fact that this bill had that support likely played a role in my decision to vote for it. For the past two and a half years, I have served as a judge in the New York State Court of Claims, and I fully understand that the role of a judge is fundamentally different from that of a policymaker, requiring me to act as a neutral arbiter. If confirmed as a district court judge, I assure you that my past policy positions will in no way affect my ability to be fair, impartial, and neutral.

87. **Did you read the text of H.R. 7120, the “George Floyd Justice in Policing Act,” at any time before you cosponsored or voted for it?**

Response: Yes.

88. **Are you aware that H.R. 7120, the “George Floyd Justice in Policing Act,” would end qualified immunity?**

Response: According to the summary of H.R. 7120, the “George Floyd Justice in Policing Act,” the bill does not end but limits qualified immunity as a defense to liability in a private civil action against a law enforcement officer or state correctional officer. While I am now a neutral arbiter, rather than a policymaker, a review of my past public statements as a policymaker indicates I was not in favor of ending qualified immunity.

89. **Do you believe that ending qualified immunity would benefit your donor, the American Association for Justice, or your father, the founder of a personal injury law firm?**

Response: For the past two and a half years I have been serving as a judge in the New York State Court of Claims and past ten months as an Acting Supreme Court Justice in Oneida County. I have not practice personal injury law since 2022 and have not served as a policymaker in almost four years. My father, Louis Brindisi, is 90 years old, suffering from several health issues and mostly retired from the practice of law. I am not able to speak to how ending qualified immunity would benefit him or the American Association of Justice. While I am now a neutral arbiter, rather than a policymaker, a review of my past public statements as a policymaker indicate I was not in favor of ending qualified immunity.

90. **Did you contest the results of the 2020 election for New York’s 22nd Congressional District, the seat for which you sought reelection?**

Response: Both campaigns filed lawsuits, and a judge had to oversee the review of challenged ballots. The close margin of the election results led to a prolonged process involving the verification of affidavit and absentee ballots, and a series of court orders.

The recanvass lasted for nearly three months. Following the conclusion of the election the Department of Justice (DOJ) did sue Oneida County, New York, over issues related to the administration of the 2020 election. The lawsuit, filed in 2021, alleged that the county violated federal voting laws, particularly the National Voter Registration Act (NVRA) and the Help America Vote Act (HAVA). The lawsuit stemmed from problems during the election between Claudia Tenney and myself, including Oneida County's failure to process voter registration applications properly. The DOJ asserted that Oneida County did not meet its obligations under federal law to ensure that all eligible voters could register and participate in the election. Specifically, the county was accused of failing to process applications submitted through the Department of Motor Vehicles (DMV) in a timely manner, resulting in voters being left off the registration rolls on Election Day.

91. **Did you contest that election result for approximately three months after Election Day?**

Response: See response to 90 above.

92. **Were you the last Congressional candidate in the United States to concede your seat's election results for the 2020 election cycle?**

Response: I am not aware if I was the last Congressional candidate in the United States to concede my seat's election results for the 2020 election cycle.

93. **Do you believe that by denying the results of the 2020 election, you cast doubt on the integrity of U.S. federal elections?**

Response: See my response to 90 above. In addition, a review of my public statements from that time indicate that I conceded the race to Claudia Tenney in early February 2021 following the resolution of legal challenges filed by both campaigns. In my concession statement, I accepted the outcome of my race, emphasized respect for the democratic process and thanked supporters for their efforts. I acknowledged the challenges of the recanvass and legal battles but expressed pride in my service during my term in Congress. I also wished Claudia Tenney well in her role as the district's representative and indicated my focus would shift to family and exploring other ways to serve the community.

94. **Why did you decide to stop contesting the results of your election?**

Response: See my response to 93 above.

95. **Did members of the Democratic Party, or individuals with ties to the Democratic Party, contact you to cease contesting the results of the 2020 election in exchange for a future position, such as a state court or federal court judgeship?**

Response: No.

96. **Did you ever contact members of the Democratic Party, or individuals with ties to the Democratic Party, to cease contesting the results of the 2020 election in exchange for a future position, such as a state court or federal court judgeship?**

Response: No.

Senate Judiciary Committee Hearing
“Nominations”
Questions for the Record for Anthony J. Brindisi
to be United States District Judge for the Northern District of New York

QUESTIONS FROM SENATOR BLACKBURN

1. **At your confirmation hearing on September 25, 2024, you acknowledged that—while a Member of the New York State Assembly in 2015—you cosponsored the *New York State Dream Act*, which was ultimately signed into law by Governor Cuomo in 2019. See 2019 N.Y. Laws 26.**

- a. **Do you still support providing taxpayer-funded scholarships to illegal immigrants?**

Response: Support for scholarships for undocumented students is a position I took in my role as a policymaker, a role I no longer hold. In my current role as a New York State Court of Claims Judge and Acting Supreme Court Justice in Oneida County, as well as a judicial nominee for the Federal District Court in the Northern District of New York, I am precluded by the New York State Code of Judicial Conduct under Rule 100.3 (B)(8) and the Code of Conduct for United States Judges under Canon 3(A)(6), from commenting on my personal beliefs or commenting prematurely on issues or questions that could potentially come before the court. If confirmed, and such a case presented to me, I would review the particular facts of the case, and follow binding Supreme Court and Second Circuit precedent in any case presenting this issue. My personal views or past policy positions would play no role in my review.

- b. **Please provide your specific rationale for cosponsoring the *New York State Dream Act* in 2015.**

Response: It has been approximately six years since I voted for this legislation, and I do not recall every specific detail of my reasoning at that time. However, a review of some of my public statements around that time indicate that I was motivated in part by helping young people access a college education. This bill was similar to laws already passed in Texas, New Mexico, California and other states. For the past two and a half years, I have served as a judge in the New York State Court of Claims, and I fully understand that the role of a judge is fundamentally different from that of a policymaker, requiring me to act as a neutral arbiter. If confirmed as a district court judge, I assure you that my past policy positions will in no way affect my ability to be fair, impartial, and neutral.

- c. **Do you regret your decision to cosponsor the *New York State Dream Act*?**

Response: This is a position I took in my previous role as a policymaker, a role I no longer hold. In my current role as a New York State Court of Claims Judge and

Acting Supreme Court Justice in Oneida County, as well as a judicial nominee for the Federal District Court in the Northern District of New York, I am precluded by the New York State Code of Judicial Conduct under Rule 100.3 (B)(8) and the Code of Conduct for United States Judges under Canon 3(A)(6), from commenting on my personal beliefs or commenting prematurely on issues or questions that could potentially come before the court. If confirmed, and such a case presented to me, I would review the particular facts of the case, and follow binding Supreme Court and Second Circuit precedent in any case presenting this issue. My personal views or past policy positions would play no role in my review. For the past two and a half years, I have served as a judge in the New York State Court of Claims, and I fully understand that the role of a judge is fundamentally different from that of a policymaker, requiring me to act as a neutral arbiter. If confirmed as a district court judge, I assure you that my past policy positions will in no way affect my ability to be fair, impartial, and neutral.