

Senator Lindsey Graham, Ranking Member
Questions for the Record
Ms. Elizabeth Coombe

Nominee to be United States District Judge for the Northern District of New York

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

Response: Yes.

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

Response: No.

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

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

Response: No.

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

Response: No.

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

Response: The Supreme Court does not normally consider foreign law when interpreting the Constitution. The Supreme Court has, however, considered historical English common law when determining the original public meaning of the Constitution. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008) (Second Amendment); *Crawford v. Washington*, 541 U.S. 36 (2004) (Confrontation Clause).

- 6. Please explain whether you agree or disagree with the following statement: “The judgments about the Constitution are value judgments. Judges exercise their own**

independent value judgments. You reach the answer that essentially your values tell you to reach.”

Response: I disagree with this statement. A district judge should faithfully apply controlling Supreme Court and Second Circuit precedent to the facts of each case regardless of any personal views or beliefs that he or she might have.

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

Response: Yes. Treaties “are not domestic law unless Congress has either enacted implementing statutes or the treaty itself conveys an intention that it be self-executing and is ratified on these terms.” *Medellin v. Texas*, 552 U.S. 491, 505 (2008) (internal quotations and citations omitted).

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

Response: Black’s Law Dictionary (12th ed. 2024) defines prosecutorial discretion as “1. Criminal law. 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.”

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

Response: No. A district judge is required to faithfully apply controlling Supreme Court and Second Circuit precedent to the facts of each case.

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

Response: Yes.

- 11. In the aftermath of the brutal terrorist attack on Israel on October 7, 2023 the president of New York University’s student bar association wrote “Israel bears full responsibility for this tremendous loss of life. This regime of state-sanctioned violence**

created the conditions that made resistance necessary.” Do you consider such a statement, publicly made by a law student, to be disqualifying with regards to a potential clerkship in your chambers? Please provide a yes or no answer. If you would like to include an additional narrative response, you may do so, but only after a yes or no answer. Failure to provide a yes or no answer will be construed as a “no.”

Response: Yes.

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

Response: In addition to direct appeals to the Court of Appeals from the final judgment of conviction and motions to correct a sentence pursuant to Fed. R. Crim. P. 35, defendants may file motions pursuant to 28 U.S.C. § 2241 (writ of habeas corpus), 28 U.S.C. § 2255 (motion to vacate, set aside, or modify), and 18 U.S.C. § 3582(c) (motion for compassionate release or lower sentence because the sentencing range was lowered by the Sentencing Commission).

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

Response: The Supreme Court held that the consideration of race as part of the admissions programs used by Harvard College and the University of North Carolina violated the Equal Protection Clause of the Fourteenth Amendment. *Students for Fair Admissions, Inc. v. Harvard College*, 600 U.S. 181 (2023). The Supreme Court explained, “we have permitted race-based admissions” only if they “comply with strict scrutiny,” “never use race as a stereotype or negative, and – at some point – they must end.” *Id.* at 213. The Supreme Court concluded that the “admissions systems – however well intentioned and implemented in good faith – fail each of these criteria.” *Id.* at 213. The Supreme Court stated that each “student must be treated based on his or her experiences as an individual – not on the basis of race.” *Id.* at 231.

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

Response: Yes.

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

Response: I have been involved in hiring AUSAs since approximately 2010 when I began participating in the initial interviews of AUSA applicants. When I became the Deputy Criminal Chief in 2012, I continued to participate in the initial

AUSA interviews and sometimes participated in “second round” interviews. From 2014 through the present, first as the Criminal Chief and later as the First Assistant U.S. Attorney, I have participated in “second round” interviews. Since approximately 2012, I have also been involved in support staff hiring mostly for positions that report to me. As the First Assistant U.S. Attorney, I am also involved in the selection of supervisors throughout the district, and I have administrative duties regarding hiring.

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

Response: No.

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

Response: No.

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

Response: Not that I am aware of.

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

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

Response: Yes. *E.g.*, *Students for Fair Admissions v. Harvard College*, 600 U.S. 181, 206-07 (2023); *Chinese American Citizens Alliance of Greater New York v. Adams*, 116 F.4th 161, 170 (2d Cir. 2024).

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

Response: The Supreme Court held that Colorado could not use an anti-discrimination act to compel a website designer to create wedding websites for same sex couples

contrary to her sincerely held religious beliefs because that would violate the First Amendment's Free Speech Clause by requiring the website designer to "either speak as the State demands or face sanctions for expressing her own beliefs." *303 Creative LLC v. Elenis*, 600 U.S. 570, 589 (2023).

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

Is this a correct statement of the law?

Response: Yes. The Supreme Court quoted the first clause of this statement in *303 Creative LLC v. Elenis*, 600 U.S. 570, 584 (2023).

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

Response: If I am fortunate enough to be confirmed, and I were presented with a case requiring a determination of whether a law regulating speech is content-based or content-neutral, I would faithfully apply controlling Supreme Court and Second Circuit precedent. The question of whether a law is content based "requires a court to consider whether a regulation of speech on its face draws distinctions based on the message a speaker conveys." *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015) (internal quotations omitted). In addition, even laws that are "facially content neutral, will be considered content-based regulations of speech" where they "cannot be justified without reference to the content of the regulated speech," or they "were adopted by the government because of disagreement with the message [the speech] conveys." *Id.* at 164 (internal quotations omitted).

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

Response: In *Counterman v. Colorado*, 600 U.S. 66 (2023), the Supreme Court held that the First Amendment "requires proof that the defendant had some subjective understanding of the threatening nature of his statements." *Id.* at 69. "[R]ecklessness is sufficient," and prosecutors "must show that the defendant consciously disregarded a substantial risk that his communications would be viewed as threatening violence." *Id.*

23. 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: Questions of fact normally “address[] questions of who did what, when or where, how or why.” *U.S. Bank Nat’l Ass’n v. Vill. at Lakeridge, LLC*, 583 U.S. 387, 394 (2018). The Supreme Court has stated that distinguishing between questions of law and fact “is sometimes slippery.” *Thompson v. Keohane*, 516 U.S. 99, 111 (1995); *see, e.g., id.* (discussing this issue in the context of 28 U.S.C. § 2254(d)). If I am fortunate enough to be confirmed, and I were confronted with a case presenting this issue, I would faithfully apply controlling Supreme Court and Second Circuit precedent.

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

Response: A district judge is required to follow 18 U.S.C. § 3553 when imposing a sentence. That statute does not direct that any factor is more important than any other. If I am fortunate enough to be confirmed, I would faithfully follow 18 U.S.C. § 3553 and controlling Supreme Court and Second Circuit precedent when imposing a sentence.

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

Response: As a judicial nominee, I am not permitted to comment on the reasoning of any Supreme Court decision by the Code of Conduct for United States Judges. If I am fortunate enough to be confirmed, I would faithfully apply controlling Supreme Court and Second Circuit precedent to the facts of every case.

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

Response: As a judicial nominee, I am not permitted to comment on the reasoning of any Second Circuit decision by the Code of Conduct for United States Judges. If I am fortunate enough to be confirmed, I would faithfully apply controlling Supreme Court and Second Circuit precedent to the facts of every case.

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

Response: That statute prohibits “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, picket[ing] or parad[ing] 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

us[ing] any sound-truck or similar device or resort[ing] to any other demonstration in or near any such building or residence.” 18 U.S.C. § 1507. The maximum term of imprisonment is not more than one year.

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

Response: As a judicial nominee, I am not permitted to offer an opinion on this question by the Code of Conduct for United States Judges because that issue may be litigated before me if I am confirmed. If I am fortunate enough to be confirmed, I would faithfully apply controlling Supreme Court and Second Circuit precedent to the facts of every case. I am not aware of any Supreme Court decision regarding the constitutionality of this statute. In *Cox v. Louisiana*, 379 U.S. 559 (1965), the Supreme Court held that a similar Louisiana statute was constitutional.

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

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

Response: Yes. The issue in *Brown v. Board of Education* is so unlikely to be litigated during my lifetime that like other judicial nominees I may state that it was correctly decided without violating the Code of Conduct for United States Judges.

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

Response: Yes. The issue in *Loving v. Virginia* is so unlikely to be litigated during my lifetime that like other judicial nominees I may state that it was correctly decided without violating the Code of Conduct for United States Judges.

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

Response: As a judicial nominee, I am not permitted to comment on whether a Supreme Court decision was correctly decided by the Code of Conduct for United States Judges. If I am fortunate enough to be confirmed, I would faithfully apply this and all controlling Supreme Court and Second Circuit precedent.

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

Response: The Supreme Court overturned *Roe v. Wade* in *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022). The decision in *Dobbs* is controlling precedent and, if I am fortunate enough to be confirmed, I would faithfully apply *Dobbs* and all controlling Supreme Court and Second Circuit precedent.

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

Response: The Supreme Court overturned *Planned Parenthood v. Casey* in *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022). The decision in *Dobbs* is controlling precedent and, if I am fortunate enough to be confirmed, I would faithfully apply *Dobbs* and all controlling Supreme Court and Second Circuit precedent.

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

Response: As a judicial nominee, I am not permitted to comment on whether a Supreme Court decision was correctly decided by the Code of Conduct for United States Judges. If I am fortunate enough to be confirmed, I would faithfully apply this and all controlling Supreme Court and Second Circuit precedent.

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

Response: As a judicial nominee, I am not permitted to comment on whether a Supreme Court decision was correctly decided by the Code of Conduct for United States Judges. If I am fortunate enough to be confirmed, I would faithfully apply this and all controlling Supreme Court and Second Circuit precedent.

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

Response: As a judicial nominee, I am not permitted to comment on whether a Supreme Court decision was correctly decided by the Code of Conduct for United States Judges. If I am fortunate enough to be confirmed, I would faithfully apply this and all controlling Supreme Court and Second Circuit precedent.

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

Response: As a judicial nominee I am not permitted to comment on whether a Supreme Court decision was correctly decided by the Code of Conduct for United States Judges. If I am fortunate enough to be confirmed, I would faithfully apply this and all controlling Supreme Court and Second Circuit precedent.

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

Response: As a judicial nominee, I am not permitted to comment on whether a Supreme Court decision was correctly decided by the Code of Conduct for United States Judges. If I am fortunate enough to be confirmed, I would faithfully apply this and all controlling Supreme Court and Second Circuit precedent.

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

Response: As a judicial nominee, I am not permitted to comment on whether a Supreme Court decision was correctly decided by the Code of Conduct for United States Judges. If I am fortunate enough to be confirmed, I would faithfully apply this and all controlling 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: As a judicial nominee, I am not permitted to comment on whether a Supreme Court decision was correctly decided by the Code of Conduct for United States Judges. If I am fortunate enough to be confirmed, I would faithfully apply this and all controlling Supreme Court and Second Circuit precedent.

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

Response: As a judicial nominee, I am not permitted to comment on whether a Supreme Court decision was correctly decided by the Code of Conduct for United States Judges. If I am fortunate enough to be confirmed, I would faithfully apply this and all controlling Supreme Court and Second Circuit precedent.

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

Response: If I am fortunate enough to be confirmed, I would apply controlling Supreme Court and Second Circuit precedent. In *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022), the Supreme Court held that “when the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation’s historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation’s historical tradition may a court conclude that the individual’s conduct falls outside the Second Amendment’s unqualified command.” *Bruen* at 17 (internal quotations omitted).

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

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

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

Response subparts a-c: No.

32. The Alliance for Justice is a “national association of over 120 organizations, representing a broad array of groups committed to progressive values and the creation of an equitable, just, and free society.”

- a. Has anyone associated with Alliance for Justice, including, but not limited to, Rakim Brooks, Betsy Miller Kittredge, Nan Aron, Jake Faleschini, and/or Zachery Morris, requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?
- b. Are you currently in contact with anyone associated with the Alliance for Justice including, but not limited to: Rakim Brooks, Betsy Miller Kittredge, Nan Aron, Jake Faleschini, and/or Zachery Morris? If so, who?
- c. Have you ever been in contact with anyone associated with Alliance for Justice, including, but not limited to: Rakim Brooks, Betsy Miller Kittredge, Nan Aron, Jake Faleschini, and/or Zachery Morris? If so, who?

Response subparts a-c: No.

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

- a. Has anyone associated with Arabella Advisors requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?
 - i. Please include in this answer anyone associated with Arabella’s subsidiaries, including the Sixteen Thirty Fund, the New Venture Fund, the Hopewell Fund, the Windward Fund, the North Fund, or any other such Arabella dark-money fund.
- b. Are you currently in contact with anyone associated with Arabella Advisors, including, but not limited to: Eric Kessler, Himesh Bhise, Joseph Brooks, Isaiah Castilla, and/or Saurabh Gupta?
 - i. Please include in this answer anyone associated with Arabella’s subsidiaries, including the Sixteen Thirty Fund, the New Venture Fund, the Hopewell Fund, the Windward Fund, the North Fund, or any other such Arabella dark-money fund that is still shrouded.

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

Response subparts a-c: No.

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

- a. **Has anyone associated with Open Society Fund requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**
- b. **Are you currently in contact with anyone associated with the Open Society Foundations, including but not limited to: George Soros, Alexander Soros, Mark Malloch-Brown, and/or Binaifer Nowrojee?**
- c. **Have you ever been in contact with anyone associated with the Open Society Foundations including but not limited to: George Soros, Alexander Soros, Mark Malloch-Brown, and/or Binaifer Nowrojee?**
- d. **Have you ever received any funding, or participated in any fellowship or similar program affiliated with the Open Society network?**

Response subparts a-d: No.

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

- a. **Has anyone associated with Fix the Court requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**
- b. **Are you currently in contact with anyone associated with Fix the Court, including, but not limited to: Gabe Roth, and/or Josh Cohen? If so, who?**
- c. **Have you ever been in contact with anyone associated with Fix the Court including, but not limited to: Gabe Roth, and/or Josh Cohen? If so, who?**

Response subparts a-c: No.

36. The Raben Group is a lobbying group that “champions diversity, equity, and justice as core values that ignite our mission for impactful change in corporate, nonprofit, government and foundation work.” The group prioritizes judicial nominations and

its list of clients have included the Open Society Foundations, the American Civil Liberties Union, the New Venture Fund, the Sixteen Thirty Fund, and the Hopewell Fund. It staffs the Committee for a Fair Judiciary.

- a. **Has anyone associated with The Raben Group requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**
- b. **Are you currently in contact with anyone associated with The Raben Group, including but not limited to: Robert Raben, Donald Walker, Patty First, Joe Onek, Gara LaMarche, Steve Sereno, Dylan Tureff and/or Katherine Huffman? If so, who?**
- c. **Have you ever been in contact with anyone associated with The Raben Group including but not limited to: Robert Raben, Donald Walker, Patty First, Joe Onek, Gara LaMarche, Steve Sereno, Dylan Tureff, and/or Katherine Huffman? If so, who?**
- d. **Has anyone associated with the Raben Group offered to assist you with your nomination, including but not limited to organizing letters of support?**

Response subparts a-d: No.

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

- a. **Has anyone associated with the Committee for a Fair Judiciary requested that you provide services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**
- b. **Are you currently in contact with anyone associated with the Committee for a Fair Judiciary, including, but not limited to: Jeremy Paris, Erika West, Elliot Williams, Nancy Zirkin, and/or Joe Onek? If so, who?**
Have you ever been in contact with anyone associated with the Committee for a Fair Judiciary, including, but not limited to: Jeremy Paris, Erika West, Elliot Williams, Nancy Zirkin, and/or Joe Onek? If so, who?

Response subparts a-b: No.

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

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

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

Response subparts a-c: No.

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

Response: On April 5, 2024, I submitted an application to Senator Gillibrand's office. On April 25, 2024, I interviewed with Senator Gillibrand's office. On July 15, 2024, Senator Gillibrand's office asked if I would like to be considered for a Syracuse vacancy. On August 5, 2024, the White House Counsel's Office asked to talk with me, and Senator Gillibrand's office told me that Senator Gillibrand had recommended me as a potential candidate for the nomination. On August 6, 2024, I interviewed with attorneys from the White House Counsel's Office, who informed me that day that I would be moving forward in the selection process. Since then, I have been in contact with officials from the Office of Legal Policy at the Department of Justice and the White House Counsel's Office. On August 28, 2024, the President announced his intent to nominate me.

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

Response: No, I did not talk to anyone directly associated with Demand Justice, and I am not aware of anyone who did so on my behalf.

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

Response: No, I did not talk to anyone directly associated with Alliance for Justice, and I am not aware of anyone who did so on my behalf.

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

Response: No, I did not talk to anyone directly associated with Arabella Advisors, and I am not aware of anyone who did so on my behalf.

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

Response: No, I did not talk to anyone directly associated with Open Society Foundations, and I am not aware of anyone who did so on my behalf.

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

Response: No, I did not talk to anyone directly associated with Fix the Court, and I am not aware of anyone who did so on my behalf.

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

Response: No, I did not talk to anyone directly associated with The Raben Group or the Committee for a Fair Judiciary, and I am not aware of anyone who did so on my behalf.

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

Response: No, I did not talk to anyone directly associated with the American Constitution Society, and I am not aware of anyone who did so on my behalf.

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

Response: After talking to others, including the Office of Legal Policy, about how to convey my litigation experience most effectively, I decided which cases to include on my committee questionnaire.

- a. If yes,
 - i. Who?
 - ii. What advice did they give?

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

Response: Please see my response to question 47.

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

Response: On August 5, 2024, the White House Counsel's Office asked to talk with me. On August 6, 2024, I interviewed with attorneys from the White House Counsel's Office, who informed me that day that I would be moving forward in the selection process. Since then, I have been in contact with officials from the Office of Legal Policy at the Department of Justice and the White House Counsel's Office. On August 28, 2024, the President announced his intent to nominate me.

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

Response: On October 2, 2024, the Office of Legal Policy provided me with these questions. I drafted answers and sent my draft answers to the Office of Legal Policy. After receiving comments, I made edits that I thought were appropriate and provided my final answers to the Office of Legal Policy.

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

Question for Elizabeth C. Coombe, to be a U.S. District Judge for the Northern District of New York

After law school you clerked for Judge Diana Murphy while she was serving on the United States District Court for the District of Minnesota. Judge Murphy was a mentor to me during my legal career, and was beloved by so many in Minnesota.

- **What did you learn from Judge Murphy and how will that inform your approach as a district court judge?**

Response: Judge Murphy was an extraordinary judge who set high standards for herself in all aspects of her role as a district judge. She taught me the importance of legal excellence, demeanor, hard work, and efficiency.

Judge Murphy taught me how to approach a legal question. She began with thorough preparation, and she used oral argument to ask probing questions getting to the essence of the issue that she had to resolve. Her clear, concise, and well-organized decisions were easy for everyone to understand, and they were issued promptly. Always loyal to the rule of law, she understood her limited role as a district judge, and she faithfully applied the relevant precedent to the facts of each case before her.

Judge Murphy also taught me the importance of judicial temperament with her own impeccable demeanor. Even under difficult circumstances, Judge Murphy was patient, friendly, and even tempered. She did not rush litigants, and she gave them her full attention. She also treated everyone with dignity and respect.

Finally, Judge Murphy taught me the value of hard work and efficiency. In addition to Judge Murphy's work as a judge, she was very involved in judicial and community organizations. She juggled all of these time-consuming roles with a remarkable work ethic, a constant commitment to efficiency, and an incredible energy.

Judge Murphy's lessons have guided me throughout my career as a public servant working for the federal government. If I am fortunate enough to be confirmed as a district judge, I would continue to strive to meet her high standards in that new role.

Senator Mike Lee
Questions for the Record
Elizabeth C. Coombe to be United States District Judge for the Northern District of New York

1. How would you describe your judicial philosophy?

Response: Based on my experience as a litigator and district court law clerk, a judge should begin every case with an open mind, treat everyone with dignity and respect, diligently prepare, thoroughly review the arguments of the parties, faithfully apply controlling precedent to the facts of the case, and promptly issue clear decisions.

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

Response: If I am fortunate enough to be confirmed, I would faithfully follow Supreme Court and Second Circuit precedent when interpreting a federal statute. If there were controlling precedent, I would apply that precedent. If there were no controlling precedent, I would begin with the text of the statute. If the plain meaning were clear, I would apply that meaning. If the meaning were not clear, then I would follow Supreme Court and Second Circuit precedent about what sources to consult. Those could include canons of construction and other methods of interpretation and, in some circumstances, persuasive authority from other circuits and, in limited circumstances as guided by Supreme Court and Second Circuit precedent, legislative history.

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

Response: If am fortunate enough to be confirmed, I would faithfully follow controlling Supreme Court and Second Circuit precedent interpreting the constitutional provision. If there were no controlling precedent, I would begin with the text of the constitutional provision and follow Supreme Court and Second Circuit precedent about how to interpret that text. For example, the Supreme Court has looked at the original public understanding of the text in the context of the Second Amendment, *see, e.g. District of Columbia v. Heller*, 554 U.S. 570 (2008), and the Confrontation Clause, *see Crawford v. Washington*, 541 U.S. 36 (2004).

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

Response: The Supreme Court has explained that both the text and original meaning of a constitutional provision are important when interpreting the Constitution. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008) (Second Amendment); *Crawford v. Washington*, 541 U.S. 36 (2004) (Confrontation Clause). If I am fortunate enough to be confirmed, I would faithfully follow these and all controlling Supreme Court and Second Circuit precedent regarding constitutional interpretation.

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

Response: Please see my response to Question 2.

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

Response: The Supreme Court “normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment.” *Bostock v. Clayton County*, 590 U.S. 644, 654 (2020). See also *District of Columbia v. Heller*, 554 U.S. 570 (2008) (determining the original public meaning of the Second Amendment). If I am fortunate enough to be confirmed, I would faithfully follow these and all Supreme Court and Second Circuit precedent regarding statutory and constitutional interpretation.

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

Response: The constitutional requirements for standing are: “(i) that [a plaintiff] has suffered or likely will suffer an injury in fact, (ii) that the injury likely was caused or will be caused by the defendant, and (iii) that the injury likely would be redressed by the requested judicial relief.” *Food and Drug Admin. v. Alliance for Hippocratic Med.*, 602 U.S. 367, 380 (2024).

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

Response: The Necessary and Proper Clause, U.S. Const., art. I, § 8, provides Congress with the authority to “make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.” See also *McCulloch v. Maryland*, 17 U.S. 316 (1819) (holding that Congress had the power to create a national bank even though that power was not specifically enumerated in the Constitution).

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: The Supreme Court has stated that the “question of the constitutionality of action taken by Congress does not depend on recitals of the power which it undertakes to exercise.” *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 570 (2012) (internal quotations omitted). If I am fortunate enough to be confirmed, I

would faithfully follow Supreme Court and Second Circuit precedent if presented with this type of issue.

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

Response: The Due Process Clause protects “those fundamental rights and liberties which are, objectively, deeply rooted in this Nation’s history and tradition, and implicit in the concept of ordered liberty such that neither liberty nor justice would exist if they were sacrificed.” *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (internal quotations and citations omitted). Examples of such rights include the rights to “marry,” “have children,” “direct the upbringing and education of one’s children,” and “marital privacy.” *Id.* at 720.

10. What rights are protected under substantive due process?

Response: Please see my response to question 9.

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: In *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 231 (2022), the Supreme Court held that the right to abortion is not a fundamental right protected by the Due Process Clause. In *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937), the Supreme Court overruled *Lochner v. New York*.

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

Response: The Supreme Court has held that Congress may (1) “regulate the use of the channels of interstate commerce;” (2) “regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities;” and (3) “those activities having a substantial relation to interstate commerce,” that is “whether the regulated activity substantially affects interstate commerce.” *United States v. Lopez*, 514 U.S. 549, 558-59 (1995) (internal quotations and citations omitted).

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 stated that the “traditional indicia of suspectness” include being “saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political

process.” *San Antonio Indep. School Dist. v. Rodriguez*, 411 U.S. 1, 28 (1973). Race, religion, national origin, and alienage are suspect classes.

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

Response: The Framers believed that checks and balances and the separation of powers would protect the balance of power and personal liberty. *See Morrison v. Olson*, 487 U.S. 654, 693 (1988) (the Framers “regarded” these systems as protection from “the encroachment or aggrandizement of one branch at the expense of the other”); *Bowsher v. Synar*, 478 U.S. 714, 730 (1986) (the Framers “recognized that . . . structural protections against abuse of power were critical to preserving liberty”).

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

Response: If I am fortunate enough to be confirmed and I were presented with an issue about whether one branch had assumed an authority not granted by the text of the Constitution, I would faithfully apply controlling Supreme Court and Second Circuit precedent regarding the branch’s authority under the Constitution to the facts of the case before me. *See, e.g., Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 570 (2012) (the “question of the constitutionality of action taken by Congress does not depend on recitals of the power which it undertakes to exercise”) (internal quotations omitted); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952) (“The President’s power, if any, to issue the order must stem either from an act of Congress or from the Constitution itself.”).

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

Response: Empathy should not play any role.

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

Response: They are both wrong. A district court judge must faithfully apply controlling precedent to the facts of each case.

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

Response: I have not studied the history of the Supreme Court’s use of its judicial review power. A district court judge must faithfully, fairly, and impartially apply

controlling precedent to the facts of each case. That obligation is not consistent with “aggressive” or “passive” judicial review.

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 “1. [a] court’s power to review the actions of other branches or levels of government; esp., the courts’ power to invalidate legislative and executive actions as being unconstitutional” and 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: Elected officials are required to support the Constitution, U.S. Const. art. VI, and they are bound by the Supreme Court’s interpretation of the Constitution, *Cooper v. Aaron*, 358 U.S. 1, 17-20 (1958). As a judicial nominee, I am not permitted to comment on how elected officials should balance those obligations by the Code of Conduct for United States Judges.

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: Federal courts have limited jurisdiction as articulated in Article III of the Constitution. In addition, the role of district court judges is limited to the faithful, fair, and impartial application of controlling Supreme Court and circuit precedent to the facts of each case.

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: A district court judge is bound to follow controlling Supreme Court and Second Circuit precedent. *See Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477, 484 (1989) (“If a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions.”).

- 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: They should play no role. *See, e.g.*, U.S.S.G. §5H1.10, Race, Sex, National Origin, Creed, Religion, and Socio-Economic Status (“These factors are not relevant in the determination of a sentence.”).

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

Response: I do not have a personal definition of equity. Black’s Law Dictionary (12th ed. 2024) defines equity as “1. Fairness; impartiality; evenhanded dealing.”

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

Response: Please see my response to question 24. Black’s Law Dictionary (12th ed. 2024) defines equality as “1. The quality, state or condition of being equal; esp., likeness in power or political status.”

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

Response: The Equal Protection Clause states, “No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1. I am not aware of any Supreme Court or Second Circuit precedent examining the definition of equity quoted in question 24. If I am fortunate enough to be confirmed, I would faithfully follow controlling Supreme Court and Second Circuit precedent regarding the Equal Protection Clause.

- 27. How do you define “systemic racism?”**

Response: Black's Law Dictionary (12th ed. 2024) does not provide a definition of this term, and I do not have a personal definition.

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

Response: Black's Law Dictionary (12th ed. 2024) defines critical race theory as “1. A reform movement within the legal profession, particularly within academia, whose adherents believe that the legal system has disempowered racial minorities. . . .” and “2. The body of work produced by adherents to this theory.”

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

Response: Please see my answers to questions 27 and 28.

SENATOR TED CRUZ

U.S. Senate Committee on the Judiciary

Questions for the Record for Elizabeth C. Coombe 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, racial discrimination is wrong.

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

Response: The Due Process Clause protects “those fundamental rights and liberties which are, objectively, deeply rooted in this Nation’s history and tradition and implicit in the concept of ordered liberty such that neither liberty nor justice would exist if they were sacrificed.” *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (internal quotations and citations omitted). Examples of such rights include the rights to “marry,” “have children,” “direct the upbringing and education of one’s children,” and “marital privacy.” *Id.* at 720.

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: Based on my experience as a litigator and district court law clerk, a judge should begin every case with an open mind, treat everyone with dignity and respect, diligently prepare, thoroughly review the arguments of the parties, faithfully apply controlling precedent to the facts of the case, and promptly issue clear decisions. I have not studied the Supreme Court Justices carefully enough to identify one with the most analogous approach.

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

Response: Originalism focuses on the original public meaning of the Constitution. The Supreme Court has explained that both the text and original meaning of a constitutional provision are important when interpreting the Constitution. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008) (Second Amendment); *Crawford v. Washington*, 541 U.S. 36 (2004) (Confrontation Clause). If I am fortunate enough to be confirmed, I would faithfully follow these and all controlling Supreme Court and Second Circuit precedent regarding constitutional interpretation.

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.” If I am fortunate enough to be confirmed, I would faithfully follow all controlling Supreme

Court and Second Circuit precedent regarding constitutional interpretation.

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

Response: In the unlikely event that I were presented with a constitutional issue where there was no controlling precedent, I would begin with the text of the constitutional provision and follow Supreme Court and Second Circuit precedent about how to interpret that text. For example, the Supreme Court has looked at the original public understanding of the text in the context of the Second Amendment, *see, e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008), and the Confrontation Clause, *see Crawford v. Washington*, 541 U.S. 36 (2004).

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

Response: The Supreme Court “normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment.” *Bostock v. Clayton County*, 590 U.S. 644, 654 (2020). *See also District of Columbia v. Heller*, 554 U.S. 570 (2008) (determining the original public meaning of the Second Amendment). If I am fortunate enough to be confirmed, I would faithfully follow these and all Supreme Court and Second Circuit precedent regarding statutory and constitutional interpretation.

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

Response: No. The Supreme Court has stated that the Constitution’s “meaning is fixed according to the understandings of those who ratified it,” but it “can, and must, apply to circumstances beyond those the Founders specifically anticipated.” *New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 28 (2022).

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

Response: Yes.

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

Response: As a judicial nominee, I am not permitted to comment on whether a Supreme Court decision was correctly decided by the Code of Conduct for United States Judges. If am fortunate enough to be confirmed, I would faithfully follow this and all controlling Supreme Court and Second Circuit precedent.

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

Response: Yes.

a. **Was it correctly decided?**

Response: As a judicial nominee, I am not permitted to comment on whether a Supreme Court decision was correctly decided by the Code of Conduct for United States Judges. If am fortunate enough to be confirmed, I would faithfully follow this and all controlling 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.

a. **Was it correctly decided?**

Response: As a judicial nominee, I am not permitted to comment on whether a Supreme Court decision was correctly decided by the Code of Conduct for United States Judges. If am fortunate enough to be confirmed, I would faithfully follow this and all controlling Supreme Court and Second Circuit precedent.

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

Response: Yes.

a. **Was it correctly decided?**

Response: Yes. The issue in *Brown v. Board of Education* is so unlikely to be litigated during my lifetime that like other judicial nominees I may state that it was correctly decided without violating the Code of Conduct for United States Judges.

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

Response: Yes.

a. **Was it correctly decided?**

Response: As a judicial nominee, I am not permitted to comment on whether a Supreme Court decision was correctly decided by the Code of Conduct for United States Judges. If am fortunate enough to be confirmed, I would faithfully follow this and all controlling Supreme Court and Second Circuit precedent.

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

Response: Yes.

a. **Was it correctly decided?**

Response: As a judicial nominee, I am not permitted to comment on whether a Supreme Court decision was correctly decided by the Code of Conduct for United States Judges. If am fortunate enough to be confirmed, I would faithfully follow this and all controlling Supreme Court and Second Circuit precedent.

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

Response: Yes.

a. **Was it correctly decided?**

Response: As a judicial nominee, I am not permitted to comment on whether a Supreme Court decision was correctly decided by the Code of Conduct for United States Judges. If am fortunate enough to be confirmed, I would faithfully follow this and all controlling 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: The Supreme Court has held that federal courts “need not and under the [Administrative Procedures Act] may not defer to an agency interpretation of the law simply because a statute is ambiguous.” *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244, 2273 (2024). Instead, they “must exercise their independent judgment in deciding whether an agency has acted within its statutory authority.” *Id.* at 2273.

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

Response: The Bail Reform Act, 18 U.S.C. § 3142(e)(3), creates a rebuttable presumption that pretrial detention is appropriate for enumerated crimes including: (1) controlled substance offenses where the maximum term of imprisonment is ten years or longer, (2) some violent crime, firearm, and terrorism offenses, (3) some human trafficking offenses, and (4) some offenses involving minor victims.

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

Response: A judicial officer is required to detain a person pending trial when “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.” 18 U.S.C. § 3142(e)(1). If “the judicial officer finds that there is probable cause to believe that the person committed” one of the enumerated crimes in

18 U.S.C. § 3142(e)(3), then “it shall be presumed that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community.” 18 U.S.C. § 3142(e)(3).

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. *See, e.g., 303 Creative LLC v. Elenis*, 600 U.S. 570, 589 (2023) (state could not use an anti-discrimination act to compel a website designer to create wedding websites for same sex couples contrary to her sincerely held religious beliefs because that would violate the First Amendment’s Free Speech Clause by requiring the website designer to “either speak as the State demands or face sanctions for expressing her own beliefs”); *Tandon v. Newsom*, 593 U.S. 61, 62 (2021) (“government regulations are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat *any* comparable secular activity more favorably than religious exercise.”); *Burwell v. Hobby Lobby*, 573 U.S. 682 (2014) (government regulations requiring employers to provide free contraception to employees violated the Religious Freedom Restoration Act as applied to a closely held corporation).

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

Response: The Free Exercise Clause of the First Amendment prohibits discrimination “on the basis of religious status” and “use-based discrimination.” *Carson v. Makin*, 596 U.S. 767, 787 (2022). Any “law that targets religious conduct for distinctive treatment” must meet the strict scrutiny standard, *id.* at 780-81, requiring that the “government action must advance interests of the highest order” and “be narrowly tailored in pursuit of those interests,” *id.* at 780 (internal quotations and citations omitted). Such laws “will survive strict scrutiny only in rare cases.” *Id.* at 781. In addition, “government regulations are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat *any* comparable secular activity more favorably than religious exercise.” *Tandon v. Newsom*, 593 U.S. 61, 62 (2021).

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

Response: The Supreme Court enjoined California from enforcing COVID restrictions as applied to religious gatherings in private homes while permitting comparable secular activities. *Tandon v. Newsom*, 593 U.S. 61 (2021). The plaintiffs had established a likelihood of success “on the merits of their free exercise claim;” they were “irreparably harmed by the loss of free exercise rights for even minimal periods of time;” and California had “not shown that public health would be imperiled by employing less restrictive means.” *Id.* at 64 (internal quotations omitted). In addition, “government regulations are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat *any* comparable secular activity

more favorably than religious exercise.” *Id.* at 62.

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

Response: Yes, the Free Exercise Clause “protects religious exercises” including “the ability . . . to live out . . . faith[] in daily life through the performance of (or abstention from) physical acts,” and the Free Speech Clause protects “expressive religious activities.” *Kennedy v. Bremerton School Dist.*, 597 U.S. 507, 523, 524 (2022) (internal quotations omitted).

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

Response: The Supreme Court held that the Colorado Civil Rights Commission’s “consideration” of a baker’s refusal to make a wedding cake for a same sex couple “based on his sincere religious beliefs and convictions” violated the Free Exercise Clause of the First Amendment because it “was inconsistent with the State’s obligation of religious neutrality.” *Masterpiece Cakeshop v. Colorado Civil Rights Comm’n*, 584 U.S. 617, 625 (2018). The baker “was entitled to a neutral decisionmaker who would give full and fair consideration to his religious objection as he sought to assert it in all of the circumstances in which this case was presented, considered, and decided.” *Id.* at 640.

23. **Explain your understanding of the U.S. Supreme Court’s holding and reasoning in *303 Creative LLC v. Elenis*.**

Response: The Supreme Court held that Colorado could not use an anti-discrimination act to compel a website designer to create wedding websites for same sex couples contrary to her sincerely held religious beliefs because that would violate the First Amendment’s Free Speech Clause by requiring the website designer to “either speak as the State demands or face sanctions for expressing her own beliefs.” *303 Creative LLC v. Elenis*, 600 U.S. 570, 589 (2023).

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: The protections of the Free Exercise Clause apply to a “sincerely held religious belief.” *Frazee v. Illinois Dept. of Employment Sec.*, 489 U.S. 829, 834 (1989). They are “not limited to beliefs which are shared by all of the members of a religious sect.” *Thomas v. Review Bd. of Indiana Employment Sec. Div.*, 450 U.S. 707, 715-716 (1981). In addition, “religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection.” *Id.* at 714.

a. **Are there unlimited interpretations of religious and/or church doctrine that**

can be legally recognized by courts?

Response: The protections of the Free Exercise Clause apply to a “sincerely held religious belief.” *Frazee v. Illinois Dept. of Employment Sec.*, 489 U.S. 829, 834 (1989). They are “not limited to beliefs which are shared by all of the members of a religious sect.” *Thomas v. Review Bd. of Indiana Employment Sec. Div.*, 450 U.S. 707, 715-716 (1981). In addition, “religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection.” *Id.* at 714.

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

Response: The protections of the Free Exercise Clause apply to a “sincerely held religious belief.” *Frazee v. Illinois Dept. of Employment Sec.*, 489 U.S. 829, 834 (1989). They are “not limited to beliefs which are shared by all of the members of a religious sect.” *Thomas v. Review Bd. of Indiana Employment Sec. Div.*, 450 U.S. 707, 715-716 (1981). In addition, “religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection.” *Id.* at 714.

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

Response: It is my understanding that is not 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 held that Catholic school teachers given “the responsibility of educating and forming students in the faith” could not file employment discrimination claims because they fell within the ministerial exception under the Religion Clauses of the First Amendment. *Id.* at 762. The Supreme Court stated that under these circumstances, “judicial intervention into disputes between the school and the teacher threatens the school’s independence in a way that the First Amendment does not allow.” *Id.*

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 refusal to use the Catholic Social Services (CSS) foster care program because CSS would not allow same sex couples to be foster parents violated the Free Exercise Clause of the First Amendment. The Supreme Court explained that Philadelphia’s non-discrimination policy was subject to strict scrutiny because it allowed for exceptions and was therefore not generally applicable. *Id.* at 534, 540-42. In addition, Philadelphia had not shown that it had a compelling interest “in denying an exception to CSS while making them available to others.” *Id.* at 542.

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 violated the Free Exercise Clause of the First Amendment by restricting a tuition assistance program to non-religious private schools. *Id.* at 789. The Supreme Court applied strict scrutiny because the program excluded religious schools and concluded that the State’s “antiestablishment interest” did not meet that standard. *Id.* at 781.

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 Dist.*, 597 U.S. 507 (2022), the Supreme Court held that a high school football coach was entitled to summary judgment because his post-game prayer was a “brief, quiet, personal religious observance doubly protected by the Free Exercise and Free Speech Clauses of the First Amendment.” *Id.* at 543. The Supreme Court stated that “the only meaningful justification the government offered for its reprisal rested on a mistaken view that it had a duty to ferret out and suppress religious observances even as it allows comparable secular speech.” *Id.* It added that “[t]he Constitution neither mandates nor tolerates that kind of discrimination.” *Id.* at 544.

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: Justice Gorsuch’s concurrence in that decision enumerates errors made by the lower courts including their failures to: (1) focus on the “*specific* application of” the challenged ordinance to the religious community; (2) “give due weight to exemptions other groups enjoy” and “rules in other jurisdictions;” and (3) require the County to prove that the religious community’s proposed alternative would not “work on these particular farms with these particular claimants.” *Mast v. Fillmore County*, 141 S. Ct. 2430, 2432-33 (2021).

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: As a judicial nominee, I am not permitted to offer an opinion on this question by the Code of Conduct for United States Judges because that issue may be litigated before me if I am confirmed. If I am fortunate enough to be confirmed, I would faithfully follow Supreme Court and Second Circuit precedent regarding the interpretation of this and any statute.

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: As a judicial nominee, I am not permitted to offer an opinion on this question by the Code of Conduct for United States Judges because that issue may be litigated before me if I confirmed. If I am fortunate enough to be confirmed, I would faithfully follow Supreme Court and Second Circuit precedent regarding this and any other legal question.

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

Response: The Supreme Court has stated that “[i]n contrast to a disparate-treatment case, where a plaintiff must establish that the defendant had a discriminatory intent or motive, a plaintiff bringing a disparate-impact claim challenges practices that have a disproportionately adverse effect on minorities and are otherwise unjustified by a legitimate rationale.” *Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 524 (2015) (internal quotations omitted).

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

Response: As a judicial nominee, I am not permitted to offer an opinion on this issue by the Code of Conduct for United States Judges because it is a policy question for Congress to decide. If I am fortunate enough to be confirmed, I would faithfully follow all Supreme Court precedent.

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: In *New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022), the Supreme Court summarized its holdings in this area stating that the Second Amendment protects “an individual right to keep and bear arms for self-defense” including the rights to both “possess a handgun in the home” and “to carry a handgun . . . outside the home” for self-defense. *Id.* at 9-10, 17. See also *McDonald v. Chicago*, 561 U.S. 742 (2010); *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: Justice Thomas stated that the challenged statute – 18 U.S.C. § 922(g)(8), which prohibits individuals from possessing firearms where a judicial officer has made

necessary findings – violates the Second Amendment because the government did not establish that statute was “consistent with the Nation’s historical tradition of firearm regulation.” *United States v. Rahimi*, 144 S. Ct. 1889, 1932 (2024) (Thomas, J., dissenting).

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: In *New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 17 (2022), the Supreme Court held that “when the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation’s historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation’s historical tradition may a court conclude that the individual’s conduct falls outside the Second Amendment’s unqualified command.” *Id.* at 17 (internal quotations omitted).

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

Response: Yes. In *New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022), the Supreme Court summarized its holdings in this area stating that the Second Amendment protects “an individual right to keep and bear arms for self-defense” including the rights to both “possess a handgun in the home” and “to carry a handgun . . . outside the home” for self-defense. *Id.* at 9-10, 17. *See also McDonald v. Chicago*, 561 U.S. 742 (2010); *District of Columbia v. Heller*, 554 U.S. 570 (2008).

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.

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

Response: The Constitution states that the President “shall take Care that the Laws be faithfully executed.” U.S. Const., art. II, § 3. “[T]he Executive Branch possesses authority to decide how to prioritize and how aggressively to pursue legal actions against defendants who violate the law.” *United States v. Texas*, 599 U.S. 670, 678

(2023) (internal quotations omitted). *See also Trump v. United States*, 144 S. Ct. 2312, 2334 (2024) (“the Executive Branch has exclusive authority and absolute discretion to decide which crimes to investigate and prosecute”) (internal quotations omitted).

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 prosecutorial discretion as “1. Criminal law. 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.” The Administrative Procedures Act requires “a three-step procedure for so-called notice-and-comment rulemaking” for legislative rules including notice; an opportunity for comments and agency consideration of comments; and a statement of basis and purpose in the final rule. *Perez v. Mortgage Bankers Ass’n*, 575 U.S. 92, 96 (2015) (internal quotations omitted).

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: The Supreme Court held that the stay of the district court’s judgment vacating the Centers for Disease Control and Prevention (CDC) evictions moratorium should be vacated because (1) the plaintiffs had “a substantial likelihood of success on the merits” of their claim that the CDC had exceeded its statutory authority and (2) the applicants and landlords were “at risk of irreparable harm,” while the government’s “interests have decreased.” *Alabama Ass’n of Realtors v. Health & Human Services*, 594 U.S. 758, 763, 765 (2021). The Supreme Court stated, “It is up to Congress, not the CDC, to decide whether the public interest merits further action here.” *Id.* at 766.

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: The Department of Justice “generally will not confirm the existence of or otherwise comment about ongoing investigations.” Justice Manual 1-7.400. There is an exception “[w]hen the community needs to be reassured that the appropriate law enforcement agency is investigating a matter, or where release of information is necessary to protect the public safety.” *Id.*

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*, 144 S. Ct. 2312 (2024), the Supreme Court held

that the President has (a) absolute immunity “from criminal prosecution for conduct within his exclusive sphere of constitutional authority;” *id.* at 2328; (b) “at least a *presumptive* immunity from criminal prosecution for a President’s acts within the outer perimeter of his official responsibility,” *id.* at 2331, and (c) no immunity for “unofficial acts,” *id.* at 2332. The Supreme Court stated that “[a]t a minimum, the President must therefore be immune from prosecution for an official act unless the Government can show that applying a criminal prohibition to that act would pose no dangers of intrusion on the authority and functions of the Executive Branch.” *Id.* at 2331-32 (internal quotation omitted). The Supreme Court stated, “Congress cannot act on, and courts cannot examine, the President’s actions on subjects within his conclusive and preclusive constitutional authority. It follows that an Act of Congress . . . may not criminalize the President’s actions within his exclusive constitutional power. Neither may the courts adjudicate a criminal prosecution that examines such Presidential actions.” *Id.* at 2328 (internal quotations omitted). Regarding a President’s official and unofficial acts, the Supreme Court stated, “Although Presidential immunity is required for *official* actions to ensure that the President’s decisionmaking is not distorted by the threat of future litigation stemming from those actions, that concern does not support immunity for *unofficial* conduct.” *Id.* at 2332.