Senator Lindsey Graham, Ranking Member
Questions for the Record
Ms. Tiffany R. Johnson
Nominee to be United States District Judge for the Northern District of Georgia

1. **In your SJQ, you note that you have only prosecuted one federal trial during your approximately seven-year tenure as an Assistant United States Attorney. You were a part of a 3-person trial team during that one trial.**
    a. **Have you ever delivered an opening statement before a jury in a federal trial?**

    Response: I have delivered two opening statements in state court bench trials that I tried to verdict as sole counsel, but not before a federal jury.

    b. **Have you ever delivered a closing statement before a jury in a federal trial?**

    Response: I have delivered two closing arguments in state court bench trials that I tried to verdict as sole counsel, but not before a federal jury.

    c. **How many federal jury trials were you the sole or chief counsel?**

    Response: I have served as sole counsel in two federal cases that I prepared for trial, and the defendants in each case pleaded guilty on the first day of trial. I have also tried two state court bench trials to verdict as sole counsel. I have not served as sole counsel or chief counsel in a federal jury trial that proceeded to verdict, but I have tried a federal jury trial to verdict with two other Assistant United States Attorneys.

    d. **How many federal bench trials have you tried?**

    Response: I have not tried any federal bench trials, but I have tried a federal case before a jury. I have also tried two bench trials in state court.

    e. **Is the number of cases you have tried usual for someone with seven years of experience as an Assistant United States Attorney?**

    Response: I do not have data regarding the number of trials typically tried by Assistant United States Attorneys. However, based on my experience and observations of my colleagues, the number of cases tried by a civil or criminal Assistant United States Attorney varies greatly depending on the kinds of matters they handle, the weight of the evidence, the cost of litigation, and whether there is a willingness by the opposing litigant to resolve the litigation or prosecution without trial. In my experience in civil litigation on behalf of the United States, there are very few civil matters that go to trial because an overwhelming majority of these matters resolve through dispositive motion practice or settlement. In my experience as a criminal prosecutor in white collar and public integrity matters, an

overwhelming majority of these matters resolve through plea agreement and guilty pleas.

2. **In your SJQ, you note that you began prosecuting criminal cases in 2020. You also noted that you maintained an active docket of non-criminal civil rights investigations. Please describe:**
    a. **How many of those investigations turned into active prosecutions?**

    Response: Since 2020, approximately 40 of my criminal investigations have turned into active prosecutions. My non-criminal civil rights matters were all investigated pursuant to federal civil statutes, such as the Americans with Disabilities Act and the Fair Housing Act. Therefore, none of my civil rights investigations resulted in active criminal prosecutions.

    b. **Please describe in more detail what you investigated?**

    Response: My criminal prosecutions have involved investigating violations of federal fraud and public corruption statutes, immigration laws, and illegal possession of firearms. I have investigated citizen complaints alleging violations of federal civil rights statutes, primarily under the Americans with Disabilities Act. These violations typically arise in the context of physical access to or discrimination by public accommodations, like restaurants, theaters, daycare providers, and health care providers. I handled several investigations relating to effective communication and access to qualified American Sign Language interpreters for people who are deaf or hard of hearing. In addition to the ADA, I also investigated alleged violations arising under the Fair Housing Act, the Religious Land Use and Institutionalized Persons Act, the Civil Rights of Institutionalized Persons Act, and Title VII of the Civil Rights Act of 1964.

    c. **How many of those investigations resulted in settlement agreements?**

    Response: Approximately 20 of my civil rights investigations have been resolved via settlement agreement.

    d. **Please list the case number(s) of each settlement agreement.**

    Response: Most civil rights statutes that are enforceable by the Department of Justice require the Department to pursue pre-litigation resolution. As a result, in the civil context, most civil rights investigations that resolve via settlement agreement almost always do so before any litigation is filed in federal court. Only one of my civil rights investigations was resolved after a complaint was filed in federal court: *United States v. Lanier Technical College*, No. 2:19-cv-00253-RWS-JCF (N.D. Ga.).

3. **In your senior thesis at Princeton University, you made a number of statements including:**

a. **"The American public's perception of immigrant populations has, historically, been dominated by fear and a threat to the maintenance of culture and national identity."**
    i. **What did you mean by this?**

    Response: My senior thesis at Princeton University, titled *Armed Citizens: African American and Muslim American Political Use of Military Service for Rights*, was written over fifteen years ago when I was an undergraduate. It was based on extensive research, which included firsthand interviews, research of existing political and sociological studies, and review of historical evidence, including some dating back to colonial times. The research on which I relied was intended to provide context for my overall thesis – that, much like African Americans after Reconstruction used service in the military as a way to actualize their citizenship and seek civil rights, Muslim Americans and immigrants could have similar motivations to serve this country through military service. My thesis was always intended and dedicated to honoring the service of those who sacrificed for our country, including my parents who both served in the military for decades. The above quoted language appears in a paragraph highlighting scholarship that shows "the role that the military has played in legitimizing the participatory worth of immigrants" dating back to colonial times. Earlier in that same paragraph, I cited the findings of researchers who observed that "the U.S. military's history dating back to the colonial forces in the Revolutionary War establishes a tradition of including foreigners and immigrants in the armed forces." The paragraph as a whole contrasted the military's early and historic role in including immigrants in our country, even during the early periods in our nation's history, when other institutions formally excluded certain citizens based on national origin.

b. **"The implications of military service for Muslim Americans, however, extend far beyond making claims on the state for civil liberties. Though Muslims in the U.S. have a great deal to gain by drawing attention to their service in the military and their dedication to fighting terrorism, they also risk alienating a part of their identity by serving a non-Muslim nation.**
    i. **What did you mean by this?**

    Response: My senior thesis at Princeton University, titled *Armed Citizens: African American and Muslim American Political Use of Military Service for Rights*, was written over fifteen years ago when I was an undergraduate. It was based on extensive research, which included firsthand interviews, research of existing political and sociological studies, and review of historical evidence including some dating back to colonial times. The research on which I relied was intended to provide context for

my overall thesis – that, much like African Americans after Reconstruction used service in the military as a way to actualize their citizenship and seek civil rights, Muslim Americans and immigrants could have similar motivations to serve this country through military service. My thesis was always intended and dedicated to honoring the service of those who sacrificed for our country, including my parents who both served in the military for decades. The above quoted language appears in a chapter devoted to the historical service of Muslim American soldiers in the U.S. and the firsthand accounts of Muslim soldiers, who often expressed unwavering patriotism and love for country despite experiencing instances of racial and religious discrimination. Throughout this paragraph, I credited these views to a scholar and not to any personal view I hold on this issue.

c. **You described the U.S. Supreme Court as "the inherent voice of the minority."**
    i. **What did you mean by this?**

    Response: My senior thesis at Princeton University, titled *Armed Citizens: African American and Muslim American Political Use of Military Service for Rights*, was written over fifteen years ago when I was an undergraduate. It was based on extensive research, which included firsthand interviews, research of existing political and sociological studies, and review of historical evidence including some dating back to colonial times. The research on which I relied was intended to provide context for my overall thesis – that, much like African Americans after Reconstruction used service in the military as a way to actualize their citizenship and seek civil rights, Muslim Americans and immigrants could have similar motivations to serve this country through military service. My thesis was always intended and dedicated to honoring the service of those who sacrificed for our country, including my parents who both served in the military for decades. Throughout my thesis, as best as I can tell from context, I referenced Supreme Court jurisprudence as a vehicle for marginalized groups, such as religious minorities, to seek enforcement of civil liberties. This particular phrase was derived from and supported by research cited in my thesis.

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

    Response: Yes.

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

    Response: No.

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

Response: Not applicable.

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

Response: Not applicable.

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

Response: Not applicable.

6. **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.

7. **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.

8. **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. However, the Supreme Court has occasionally looked to English common law and British institutions "as they were when the instrument was framed and adopted" in interpreting the U.S. Constitution. *See, e.g., New York Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1, 39-46 (2022).

9. **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 court's judgment about the Constitution should be based on its plain text and precedent, and personal beliefs and values should play no role in that judgment.

10. **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, now-Justice Kavanaugh's statement of the law was generally correct. *See, e.g., Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004) ("the potential implications for the foreign relations of the United States of recognizing private causes of action for violating international law should make courts particularly wary of impinging on the discretion of the Legislative and Executive Branches in managing foreign affairs.").

11. **Please define the term "prosecutorial discretion."**

    Response: The U.S. Department of Justice's Justice Manual describes prosecutorial discretion as the authority to determine "when, whom, how, and even whether to prosecute for apparent violations of federal criminal law. The prosecutor's broad discretion in such areas as initiating or foregoing prosecutions, selecting or recommending specific charges, and terminating prosecutions by accepting guilty pleas has been recognized on numerous occasions by the courts." Justice Manual § 9-27.110, cmt.

12. **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.

13. **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.

14. **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.

15. **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 federal prisoner can file a direct appeal under 28 U.S.C. § 1291 or seek to correct or reduce their sentence under Federal Rule of Criminal Procedure 35. A prisoner may collaterally attack his or her sentence under 28 U.S.C. § 2255 on the grounds that the sentence was imposed in violation of the Constitution or federal law, or that the court imposing the sentence lacked jurisdiction to impose the sentence. A prisoner may seek habeas relief challenging the execution of his or her sentence (such as conditions of confinement or failure to award good time credit) under 28 U.S.C. § 2241. A prisoner may also file a motion to modify or reduce a term of imprisonment under 18 U.S.C. § 3582. A prisoner in federal custody may also administratively seek relief directly from the Bureau of Prisons or the warden of the facility in which they are housed. Finally, the Constitution provides that a federal prisoner may seek commutation of his or her sentence or a Presidential pardon.

16. **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*, the plaintiff nonprofit organization filed suit against a public university alleging that its admissions program that considered race violated the Equal Protection Clause and Title VI of the Civil Rights Act of 1964. In *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, the same plaintiff nonprofit organization filed suit against a private university alleging similar violations of the Constitution and federal nondiscrimination laws. Both Harvard and the University of North Carolina considered race and ethnicity at one or more stages of the admissions process. 600 U.S. 181, 194-97 (2023). The Supreme Court held that neither admissions program passed strict scrutiny, and both violated the Equal Protection Clause of the Fourteen Amendment because they "lack sufficiently focused and measurable objectives warranting the use of race, unavoidably employ race in a negative manner, involve racial stereotyping, and lack meaningful end points." *Id.* at 230.

17. **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 served on the Hiring Committee for the United States Attorney's Office since 2018. I also served on Parker, Hudson, Rainer & Dobbs, LLP's Recruiting and Hiring Committee.

18. **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.

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

    Response: No.

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

    Response: No.

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

    Response: Not applicable.

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

    Response: Yes. *See, e.g., Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181, 206-07 (2023); *Peightal v. Metropolitan Dade County*, 26 F.3d 1545, 1552 (11th Cir. 1994).

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

    Response: In *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023), the plaintiff, a website and graphic design business, sought to enjoin the Colorado Civil Rights Commission from forcing the business to create speech via a wedding website that was inconsistent with the owner's religious belief that marriage should be reserved to unions between one man and one woman. The Supreme Court held that the First Amendment protects a

website designer from being forced to "create expressive designs speaking messages with which the designer disagrees." *Id.*

23. **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. *West Virginia State Board of Education v. Barnette* is binding Supreme Court precedent holding that public school students cannot not be compelled to salute a flag in violation of their sincere beliefs, and the language quoted above was recently cited in the Court's reasoning in *303 Creative LLC v. Elenis*.

24. **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 confirmed, I would follow Supreme Court and Eleventh Circuit precedent when determining whether a law regulating speech is content-based or content-neutral. Under Supreme Court precedent, government regulation of speech is content-based, and subject to strict scrutiny, "if a law applies to particular speech because of the topic discussed or the idea or message expressed." *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 163 (2015). The Court instructs a "commonsense meaning of the phrase 'content based'" that requires a court to first "consider whether a regulation of speech on its face draws distinctions based on the message a speaker conveys." *Id.* Where a regulation is facially content-neutral, a court must then look to whether the governmental motive for the regulation, "including whether the government had regulated speech 'because of disagreement' with its message, and whether the regulation was 'justified without reference to the content of the speech.'" *Id.* at 167.

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

    Response: "True threats are 'serious expressions' conveying that a speaker means to 'commit an act of unlawful violence.'" *Counterman v. Colorado*, 600 U.S. 66, 74 (2023) (quoting *Virginia v. Black*, 538 U.S. 343, 359 (2003)). The Supreme Court has distinguished the term "true" from "jests, hyperbole, or other statements that when taken in context do not convey a real possibility that violence will follow." *Id.* (internal quotation marks omitted). The First Amendment requires both objective and subjective

analysis. The existence of a threat depends on "what the statement conveys to the person on the other end." *Id.* As for the speaker's subjective *mens rea*, the Court employs a recklessness standard for true threats, holding that the speaker must be aware "that others could regard his statements as threatening violence and delivers them anyway." *Id.* at 79 (internal quotation marks omitted).

26. **Under Supreme Court and Eleventh 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: Courts consider legal precedent when determining whether an issue is a question of fact or law. Questions of fact generally address "who did what, when or where, how or why," and require courts to "marshal and weigh evidence, make credibility judgments, and otherwise address . . . 'multifarious, fleeting, special, narrow facts that utterly resist generalization.'" *U.S. Bank National Association v. Village at Lakeridge*, 583 U.S. 387, 394, 396 (2018). A question of law is one in which courts "expound on the law, particularly by amplifying or elaborating on a broad legal standard." *Id.* at 396. Mixed questions of law and fact involve a "question in which the historical facts are admitted or establish, the rule of law is undisputed, and the issue is whether the facts satisfy the statutory standard." *Rodemaker v. City of Valdosta Bd. of Educ.*, 110 F.4th 1318, 1326 (11th Cir. 2024) (quoting *Pullman-Standard v. Swint*, 456 U.S. 273 (1982)).

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

Response: The importance of any of the purposes of sentencing depends, not on my personal beliefs, but on the facts of the case, the crime committed, the defendant's history and characteristics, and the sentencing options available under the law. Under 18 U.S.C. § 3553, courts should consider the purpose of the sentence along with several other factors, and, if confirmed, I would follow the law when determining an appropriate sentence.

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

Response: As a nominee to the United States District Court, I am precluded from making public comment as to whether a Supreme Court decision was "well-reasoned" because it could be construed to reflect impaired impartiality or prejudgment of a particular issue that may come before me. If I am confirmed, I will faithfully and fully apply Supreme Court precedent.

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

Response: As a nominee to the United States District Court, I am precluded from making public comment as to whether an Eleventh Circuit decision was "well-reasoned" because it could be construed to reflect impaired impartiality or prejudgment of a particular issue that may come before me. If I am confirmed, I will faithfully and fully apply binding Eleventh Circuit precedent.

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

Response: 18 U.S.C. § 1507 falls within the obstruction series of statutes in the United States Code. The plain language of the statute prohibits obstruction of the administration of justice or intending to influence a federal judge, juror, witness, or court officer, in the discharge of his or her duties, through the use of "pickets or parades," in or near a court of the United States or the use of a "sound-truck or similar device," or "any other demonstration" in or near a building or residence occupied by "such judge, juror, witness, or court officer."

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

Response: As a nominee to the United States District Court, the Code of Conduct for United States Judges provides that I should refrain from making public comment on pending or impending matters in any court and to avoid any act that might reflect prejudgment of a particular issue or impaired impartiality. That judicial canon includes public comment on whether a particular statute is constitutional absent binding Supreme Court or Eleventh Circuit precedent. Currently, there is no Supreme Court or Eleventh Circuit precedent that addresses the constitutionality of 18 U.S.C. § 1507. *But see, Cox v. Louisiana*, 379 U.S. 536 (1965) (holding a similar state statute was constitutional, but reversing the underlying conviction as it was applied to the defendant).

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

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

    Response: As a nominee to the United States District Court, the Code of Conduct for United States Judges provides that I should refrain from making public comment on pending or impending matters in any court and to avoid any act that might reflect prejudgment of a particular issue or impaired impartiality. Because *Brown v. Board of Education* is no longer pending or impending in any court and the matter of racial segregation in public schools is unlikely to be relitigated, consistent with the judicial canons, I am comfortable expressing my view that *Brown* was correctly decided.

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

Response: As a nominee to the United States District Court, the Code of Conduct for United States Judges provides that I should refrain from making public comment on pending or impending matters in any court and to avoid any act that might reflect prejudgment of a particular issue or impaired impartiality. Because *Loving v. Virginia* is no longer pending or impending in any court and the matter of interracial marriage is unlikely to be relitigated, consistent with the judicial canons, I am comfortable expressing my view that *Loving* was correctly decided.

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

Response: As a nominee to the United States District Court, the Code of Conduct for United States Judges provides that I should refrain from making public comment on pending or impending matters in any court, and to avoid any act that might reflect prejudgment of a particular issue or impaired impartiality, such as commenting whether a case was "correctly decided." *Griswold v. Connecticut* is binding Supreme Court precedent and, if confirmed, I would faithfully and fully apply it.

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

Response: As a nominee to the United States District Court, the Code of Conduct for United States Judges provides that I should refrain from making public comment on pending or impending matters in any court, and to avoid any act that might reflect prejudgment of a particular issue or impaired impartiality, such as commenting whether a case was "correctly decided." The Supreme Court's decision in *Roe v. Wade* was overturned by its decision in *Dobbs v. Jackson Women's Health*. The Court's decision in *Dobbs* is binding precedent which, if confirmed, I would faithfully and fully apply.

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

Response: As a nominee to the United States District Court, the Code of Conduct for United States Judges provides that I should refrain from making public comment on pending or impending matters in any court, and to avoid any act that might reflect prejudgment of a particular issue or impaired impartiality, such as commenting whether a case was "correctly decided." The Supreme Court's decision in *Planned Parenthood v. Casey* was overturned by its decision in *Dobbs v. Jackson Women's Health.* The Court's decision in *Dobbs* is binding precedent which, if confirmed, I would faithfully and fully apply.

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

Response: As a nominee to the United States District Court, the Code of Conduct for United States Judges provides that I should refrain from making public comment on pending or impending matters in any court, and to avoid any act that

might reflect prejudgment of a particular issue or impaired impartiality, such as commenting whether a case was "correctly decided." The Supreme Court's decision in *Gonzales v. Carhart* is binding precedent which, if confirmed, I would faithfully and fully apply.

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

Response: As a nominee to the United States District Court, the Code of Conduct for United States Judges provides that I should refrain from making public comment on pending or impending matters in any court, and to avoid any act that might reflect prejudgment of a particular issue or impaired impartiality, such as commenting whether a case was "correctly decided." The Supreme Court's decision in *District of Columbia v. Heller* is binding precedent which, if confirmed, I would faithfully and fully apply.

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

Response: As a nominee to the United States District Court, the Code of Conduct for United States Judges provides that I should refrain from making public comment on pending or impending matters in any court, and to avoid any act that might reflect prejudgment of a particular issue or impaired impartiality, such as commenting whether a case was "correctly decided." The Supreme Court's decision in *McDonald v. City of Chicago* is binding precedent which, if confirmed, I would faithfully and fully apply.

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

Response: As a nominee to the United States District Court, the Code of Conduct for United States Judges provides that I should refrain from making public comment on pending or impending matters in any court, and to avoid any act that might reflect prejudgment of a particular issue or impaired impartiality, such as commenting whether a case was "correctly decided." The Supreme Court's decision in *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* is binding precedent which, if confirmed, I would faithfully and fully apply.

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

Response: As a nominee to the United States District Court, the Code of Conduct for United States Judges provides that I should refrain from making public comment on pending or impending matters in any court, and to avoid any act that might reflect prejudgment of a particular issue or impaired impartiality, such as commenting whether a case was "correctly decided." The Supreme Court's decision in *New York State Rifle & Pistol Association v. Bruen* is binding precedent which, if confirmed, I would faithfully and fully apply.

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

Response: As a nominee to the United States District Court, the Code of Conduct for United States Judges provides that I should refrain from making public comment on pending or impending matters in any court, and to avoid any act that might reflect prejudgment of a particular issue or impaired impartiality, such as commenting whether a case was "correctly decided." The Supreme Court's decision in *Dobbs v. Jackson Women's Health* is binding precedent which, if confirmed, I would faithfully and fully apply.

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

Response: As a nominee to the United States District Court, the Code of Conduct for United States Judges provides that I should refrain from making public comment on pending or impending matters in any court, and to avoid any act that might reflect prejudgment of a particular issue or impaired impartiality, such as commenting whether a case was "correctly decided." The Supreme Court's decisions in *Students for Fair Admissions, Inc. v. University of North Carolina* and *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College* are binding precedent which, if confirmed, I would faithfully and fully apply.

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

Response: As a nominee to the United States District Court, the Code of Conduct for United States Judges provides that I should refrain from making public comment on pending or impending matters in any court, and to avoid any act that might reflect prejudgment of a particular issue or impaired impartiality, such as commenting whether a case was "correctly decided." The Supreme Court's decision in *303 Creative LLC v. Elenis* is binding precedent which, if confirmed, I would faithfully and fully apply.

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

Response: If confirmed, I would follow and apply the standard set forth in *New York Rifle & Pistol Association v. Bruen*, 597 U.S. 1 (2022), which held that "[w]hen 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. Only then may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.'" Additionally, the Court's most recent decision in *United States v. Rahimi*, 144 S. Ct. 1889 (2024), further clarifies the standard in *Bruen.*

34. **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.

35. **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.

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

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

   Response: No.

   i. **Please include in this answer anyone associated with Arabella's subsidiaries, including the Sixteen Thirty Fund, the New Venture Fund, the Hopewell Fund, the Windward Fund, the North Fund, or any other such Arabella dark-money fund.**

b. **Are you currently in contact with anyone associated with Arabella Advisors, including, but not limited to: Eric Kessler, Himesh Bhise, Joseph Brooks, Isaiah Castilla, and/or Saurabh Gupta?**

   Response: No.

   i. **Please include in this answer anyone associated with Arabella's subsidiaries, including the Sixteen Thirty Fund, the New Venture Fund, the Hopewell Fund, the Windward Fund, the North Fund, or any other such Arabella dark-money fund that is still shrouded.**

c. **Have you ever been in contact with anyone associated with Arabella Advisors, including, but not limited to: Eric Kessler, Himesh Bhise, Joseph Brooks, Isaiah Castilla, and/or Saurabh Gupta?**

   Response: No.

   i. **Please include in this answer anyone associated with Arabella's subsidiaries, such as the Sixteen Thirty Fund, the New Venture Fund, the Hopewell Fund, the Windward Fund, the North Fund, or any other such Arabella dark-money fund that is still shrouded.**

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

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

       Response: No.

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

       Response: No.

c. **Have you ever been in contact with anyone associated with the Open Society Foundations including but not limited to: George Soros, Alexander Soros, Mark Malloch-Brown, and/or Binaifer Nowrojee?**

Response: No.

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

Response: No.

38. **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.

39. **The Raben Group is a lobbying group that "champions diversity, equity, and justice as core values that ignite our mission for impactful change in corporate, nonprofit, government and foundation work." The group prioritizes judicial nominations and its list of clients have included the Open Society Foundations, the American Civil Liberties Union, the New Venture Fund, the Sixteen Thirty Fund, and the Hopewell Fund. It staffs the Committee for a Fair Judiciary.**
    a. **Has anyone associated with The Raben Group requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

    Response: No.

    b. **Are you currently in contact with anyone associated with The Raben Group, including but not limited to: Robert Raben, Donald Walker, Patty First, Joe Onek, Gara LaMarche, Steve Sereno, Dylan Tureff and/or Katherine Huffman? If so, who?**

Response: No.

c. **Have you ever been in contact with anyone associated with The Raben Group including but not limited to: Robert Raben, Donald Walker, Patty First, Joe Onek, Gara LaMarche, Steve Sereno, Dylan Tureff, and/or Katherine Huffman? If so, who?**

Response: No.

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

Response: No.

40. **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.

41. **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.

42. **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 June 3, 2024, I submitted an application to Senators Jon Ossoff and Raphael Warnock. On June 10, 2024, I interviewed with Senator Ossoff's staff and separately with Senator Warnock's staff. On June 18, 2024, I interviewed with Senators Ossoff and Warnock. On June 24, 2024, staff for Senators Ossoff and Warnock informed me that the Senators had recommended me as a potential candidate for nomination. On June 27, 2024, I interviewed with attorneys from the White House Counsel's Office. On July 11, 2024, attorneys from the White House Counsel's Office informed me that I would be moving forward in the selection process. Thereafter, I had several contacts with officials from the Office of Legal Policy at the Department of Justice. On July 31, 2024, my nomination was submitted to the Senate.

43. **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.

44. **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.

45. **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.

46. **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.

47. **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.

48. **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.

49. **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.

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

Response: No.

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

    Response: Not applicable.

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

    Response: Not applicable.

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

Response: Not applicable.

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

Response: I interviewed with attorneys from the White House Counsel's Office on June 27, 2024. On July 11, 2024, attorneys from the White House Counsel's Office informed me that I would be moving forward in the selection process. Since July 12, 2024, I have had several communications with officials from the Department of Justice's Office of Legal Policy and the White House Counsel's Office.

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

Response: I received these questions from the Department of Justice's Office of Legal Policy on October 2, 2024. Upon receipt, I reviewed the questions, drafted responses, and provided my responses to the Office of Legal Policy. The Office of Legal Policy provided limited feedback, and I implemented edits, finalized my responses, and provided the finalized responses to the Office of Legal Policy.

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

Question for Tiffany R. Johnson, to be a U.S. District Judge for the Northern District of Georgia

Since 2017, you have served as an Assistant U.S. Attorney with the U.S. Attorney's Office for the Northern District of Georgia. You have worked on civil rights, public corruption, and white-collar crime cases.

- **What motivated you to become a federal prosecutor and what cases are you most proud of?**

Response: I am the daughter of two career military parents, and public service has always been important in my family. Before I went to law school, I interned with federal Magistrate Judge Cheryl Pollack in the Eastern District of New York where I saw firsthand the impact of the work of Assistant United States Attorneys. During my internship, a civil suit alleging police misconduct and mediated by Judge Pollack caused me to think critically about the impact of public servants on the community and the importance of both credibility and trust in law enforcement. I never forgot that case, and the opportunity to join the United States Attorney's Office for the Northern District of Georgia as an AUSA was a realization of both a calling to public service and the hope that my legal career would have a positive impact on my community.

Over the course of nearly eight years at the U.S. Attorney's Office, the cases I am most proud of tie back to the same themes I saw as judicial intern. My civil rights enforcement matters arising under the Americans with Disabilities Act have ranged from small matters involving one complainant to large investigations to remove physical barriers that may affect hundreds or thousands of people. One case that stands out concerned a veteran who was denied access to a hotel because he was accompanied by a service animal that assisted with his PTSD. A change in policy at the hotel had as much real-life impact in preventing future discrimination as a multimillion-dollar renovation of a concert venue to ensure equal access to persons with disabilities. I am also incredibly proud of the work I have been fortunate to do in prosecuting public integrity matters in our district. Public integrity prosecutions, particularly of government officials who betray the community they serve by using tax dollars for personal gain, remind the public that the rule of law is unbiased, and the same rules apply to everyone.

Senator Mike Lee
Questions for the Record
Tiffany Rene Johnson to be United States District Judge for the Northern District of Georgia

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

Response: My judicial philosophy is that trial court judges are the gatekeepers of fairness and equal justice under the law. If confirmed, I will faithfully uphold the Constitution and the laws of the United States, and I will apply the law without fear or favor. I will take each case individually, carefully review the facts, and apply the law and applicable precedent to the facts. I will treat litigants with respect and ensure that cases move diligently.

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

Response: If confirmed and presented with a case that turned on the interpretation of a federal statute, I would first look to any Supreme Court or Eleventh Circuit precedent that addresses the relevant statute and apply that precedent to the facts of the case. In the rare event that there is no applicable or relevant Supreme Court or Eleventh Circuit precedent available, I would look to the plain text of the statute and apply the "ordinary public meaning of its terms at the time of its enactment." *Bostock v. Clayton County, Ga.*, 590 U.S. 644, 654 (2020). To determine the meaning of specific undefined terms in the statute, I would look to the Dictionary Act and the context of the statute. *See Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 707-709 (2014). I might also look to persuasive authority from any other Circuit Courts of Appeal that had interpreted the federal statute, and any Supreme Court or Eleventh Circuit decisions that interpreted similar federal statutes.

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

Response: If confirmed and presented with a case that turned on the interpretation of a constitutional provision, I would first look to any Supreme Court or Eleventh Circuit precedent that addresses the interpretation of the relevant constitutional provision and apply that precedent to the facts of the case. In the rare event that there is no applicable or relevant Supreme Court or Eleventh Circuit precedent available, I would look to the plain text of the constitutional provision and apply the "normal and ordinary" meaning "known to the ordinary citizens in the founding generation." *District of Columbia v. Heller*, 554 U.S. 570, 576-77 (2008). In some cases, it may be necessary to look to the "historical background" of the constitutional provision. *New York Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1, 20 (2022). I might also look to persuasive authority from any other Circuit Courts of Appeal that had interpreted the constitutional provision, and any Supreme Court or Eleventh Circuit decisions that interpreted similar constitutional provisions.

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

Response: The Supreme Court has held that the meaning of the Constitution is fixed "according to the understandings of those who ratified it." *New York Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1, 28 (2022). The Court has explained, however, that "the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated." *Id.* And, when interpreting the Eighth Amendment, the Court considers "the evolving standards of decency that mark the progress of a maturing society." *Estelle v. Gamble*, 429 U.S. 97, 103 (1976).

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, Georgia*, 590 U.S. 644, 654 (2020). Similarly, the Court has held that the meaning of the Constitution is fixed "according to the understandings of those who ratified it." *New York Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1, 28 (2022). The Court has explained, however, that "the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated." *Id.* And, when interpreting the Eighth Amendment, the Court considers "the evolving standards of decency that mark the progress of a maturing society." *Estelle v. Gamble*, 429 U.S. 97, 103 (1976). If confirmed, I would faithfully apply Supreme Court and Eleventh Circuit precedent to interpret the meaning of any statute or provision of the Constitution.

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

Response: Constitutional standing requires (1) an "injury in fact," (2) a "causal connection between the injury and the conduct complained of," and (3) "it must be 'likely,' as opposed to merely 'speculative,' that the injury will be 'redressed by a favorable decision.'" *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).

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

Response: Congress has the power "to make all laws which shall be necessary and proper for carrying into execution the foregoing [enumerated] powers" because a "power without the means to use it, is a nullity." *McCulloch v. State*, 17 U.S. 316,

353 (1819). The Supreme Court has interpreted the Necessary and Proper Clause to "leave to Congress a large discretion as to the means that may be employed in executing a given power." *United States v. Kebodeaux*, 570 U.S. 387, 394 (2013) (internal punctuation and citations omitted).

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 question of the constitutionality of action taken by Congress does not depend on recitals of the power which it undertakes to exercise." *National Federation of Independent Business v. Sebelius*, 567 U.S. 519, 570 (2012) (internal quotations omitted). "Due respect for the decisions of a coordinate branch of Government demands that we invalidate a congressional enactment only upon a plain showing that Congress has exceeded its constitutional bounds." *United States v. Morrison*, 529 U.S. 598, 607 (2000). If faced with this question, I would follow Supreme Court and Eleventh Circuit precedent.

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

Response: Yes. The Ninth Amendment provides that unenumerated rights are "retained by the people." And, the Supreme Court has held that the Due Process Clause of the Fourteenth Amendment 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, 721 (1997) (internal citations omitted). Additionally, for unenumerated rights, the Court has required "a careful description of the asserted fundamental liberty interest." *Id.* (internal quotations omitted). The Court has recognized the right to marry, to have children, to direct the education and upbringing of one's children, to marital privacy, to use contraception, and to bodily integrity. *Id.* at 720 (collecting cases).

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: Under *Glucksberg*, substantive due process 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, 721 (1997) (internal citations omitted). The Supreme Court has held that

substantive due process does not guarantee a right to abortion. *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022). In *Lochner v. New York*, 198 U.S. 45 (1905), the Supreme Court struck down a state law prescribing maximum hours for work in bakeries. The Supreme Court overruled its decision in *Lochner*, holding that the court's prior doctrine, "that due process authorizes courts to hold laws unconstitutional when they believe the legislature has acted unwisely – has long been discarded." *Ferguson v. Skrupa*, 372 U.S. 726, 730 (1963). After *Ferguson*, the Court no longer employed substantive due process as a basis for "nullify[ing] laws a majority of the Court believed to be economically unwise." *Id.*

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

Response: The Supreme Court has "identified three broad categories of activity that Congress may regulate under its commerce power." *United States v. Morrison*, 529 U.S. 598, 608 (2000) (quoting *United States v. Lopez,* 514 U.S. 549, 558 (1995)). 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) "regulate those activities having a substantial relation to interstate commerce, *i.e.*, those activities that substantially affect interstate commerce." *Id.* at 609 (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 "traditional indicia of suspectness" for purposes of determining a suspect class are that the class is "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). The Supreme Court has ruled that classifications based on race, religion, national origin, and alienage are suspect and must survive strict scrutiny. *See Graham v. Richardson*, 403 U.S. 365 (1971); *City of New Orleans v. Duke*, 427 U.S. 297 (1976).

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

Response: The Constitution's "separation of powers is designed to preserve the liberty of all the people." *Collins v. Yellen*, 594 U.S. 220, 245 (2021). Justice Jackson's concurrence in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), describes the Constitution as "enjoin[ing] upon its branches separateness but interdependence, autonomy but reciprocity." Separation of powers is the bedrock of the Constitution, and the ability of each branch of government to check and balance the power of any other branch of government is essential to the functioning of the rule of law.

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

Response: If confirmed and presented with a case asserting that Congress or the Executive branch exceeded their constitutional power, I would consider judicial restraint in review of the actions of coequal branches of government. *See Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 455 U.S. 464, 473-74 (1982) ("The exercise of the judicial power also [e]ffects relationships between the coequal arms of the National Government. The effect is, of course, most vivid when a federal court declares unconstitutional an act of the Legislative or Executive Branch."). In my review, I would first look to Supreme Court and Eleventh Circuit precedent to determine whether there is any binding authority on the matter, and I would apply the law to the specific facts of the case accordingly. In the event no binding precedent speaks to the constitutional powers at issue, I would look to the plain text of the Constitution and apply the "normal and ordinary" meaning "known to the ordinary citizens in the founding generation." *District of Columbia v. Heller*, 554 U.S. 570, 576-77 (2008). In some cases, it may be necessary to look to the "historical background" of the constitutional provision. *New York Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1, 20 (2022), *see also Trump v. United States*, 144 S. Ct. 2312, 2329 (2024) (where there was only a limited number of prior decisions to guide the Court's determination regarding specific powers of the Executive, the Court looked "primarily to the Framers' design of the Presidency within the separation of powers," and prior relevant precedent).

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

Response: In consideration of a case, a judge should only consider the facts of the case and the applicable law. The court's ability to understand and share the feelings of another person may, however, be important to a judge's interactions with the parties, counsel, victims, and witnesses.

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

Response: The role of the judiciary is to interpret and apply the law, and these described outcomes are equally inconsistent with that role and unacceptable.

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 cannot speak to what accounts for any shift in the frequency of the Supreme Court invalidating federal statutes since 1857. While the "ultimate and supreme function" of the judicial branch is to say what the law is, the Supreme Court has cautioned federal courts to exercise restraint in the exercise of its power to review the actions of other coequal branches of government. "Repeated and essentially head-on confrontations between the life-tenured branch and the representative branches of government will not, in the long run, be beneficial to either. The public confidence essential to the former and the vitality critical to the latter may well erode if we do not exercise self-restraint in the utilization of our power to negative the actions of the other branches." *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 455 U.S. 464, 474 (1982) (internal quotations and punctuation omitted). Judicial restraint does not, however, require the judicial branch to "shrink from a confrontation with the other two coequal branches" where it is "obliged to do so in the proper performance of our judicial function, when the question raised by a party who interests entitle him to raise it." *Id.*

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

Response: The Supreme Court described judicial review as "the province and duty of the judicial department to say what the law is," "expound and interpret" the law as it applies to particular cases, and to determine the operation of laws that conflict. *Marbury v. Madison*, 5 U.S. 137, 177 (1803). In *United States v. Windsor*, 570 U.S. 744 (2013), Justice Scalia's dissent described judicial supremacy as "envision[ing] the Supreme Court standing (or rather enthroned) at the apex of government, empowered to decide all constitutional questions, always and everywhere 'primary' in its role."

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: As a judicial nominee, it is not appropriate for me to opine on how elected officials should execute their obligations under the Constitution. However, consistent with constitutional separation of powers, the *Dred Scott* decision was effectively overruled by the Fourteenth Amendment, which was proposed by the Senate and approved by the House of Representatives before being ratified by the states. And, history has demonstrated that coequal branches of government can and have, within the confines of the Constitution, exercised their constitutional powers and discretion to pass new laws and execute those laws.

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: The judicial branch relies on both the Executive Branch to enforce its rulings and on public confidence that its rulings are legitimate interpretations of the law. The Supreme Court has counseled that federal courts should practice restraint in the exercise of its power of judicial review to protect both the "public confidence essential to the [judiciary] and the vitality critical to the [executive and legislative branches." *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 455 U.S. 464, 474 (1982).

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: The duty of a district court judge is to apply the law, and district courts are bound by the precedent of their Circuit Court of Appeals and the Supreme Court. If confirmed, for every case that comes before me, I would carefully review the facts and apply the relevant precedent of the Supreme Court and the Eleventh Circuit.

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: These factors play no role in sentencing. 18 U.S.C. § 3553(a) provides the factors for a district court to consider when determining a sentence in a criminal case, and no group identity is contained in that provision. The Sentencing Reform Act and the Sentencing Guidelines further clarify that race, sex, national origin, creed, religion, and socioeconomic status are "not relevant in the determination of a sentence." 28 U.S.C. § 994 (d); U.S.S.G. § 5H1.10.

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 am not familiar with the cited quotation, and as a judicial nominee, it would not be appropriate for me to comment on a statement issued by the Biden Administration. Merriam-Webster Dictionary defines equity as "fairness or justice in the way people are treated."

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

Response: Merriam-Webster Dictionary defines equality as "the quality or state of being equal." It further provides several definitions of the word "equal," none of which are identical to the definition of equity. Based on these definitions, equity appears to involve fairness and justice, while equality involves sameness in "quality, nature, or status."

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

Response: I am not familiar with the cited quotation, and as a judicial nominee, it would not be appropriate for me to comment on a statement issued by the Biden Administration. The Fourteenth Amendment's Equal Protection Clause guarantees "equality of treatment before the law for all persons." *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181, 205 (2023).

27. **How do you define "systemic racism?"**

Response: I do not have a personal definition for the term "systemic racism," but I understand that the meaning and use of the term has changed over time and continues to be a topic of debate. If confirmed, I will treat all litigants fairly and impartially and apply the law without fear or favor consistent with Supreme Court and Eleventh Circuit precedent.

28. **How do you define "critical race theory?"**

Response: I do not have a personal definition for the term "critical race theory," but I understand that the meaning and use of the term has changed over time and continues to be a topic of debate. If confirmed, I will treat all litigants fairly and impartially and apply the law without fear or favor consistent with Supreme Court and Eleventh Circuit precedent.

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

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

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

Questions for the Record for Tiffany Rene Johnson nominated to serve as U.S. District Judge for the Northern District of Georgia

I. Directions

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

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

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

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

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

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

II. Questions

1. **Is racial discrimination wrong?**

   Response: Yes.

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

   Response: The Supreme Court has held that the Due Process Clause of the Fourteenth Amendment 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, 721 (1997) (internal citations omitted). Additionally, for unenumerated rights, the Court has required "a careful description of the asserted fundamental liberty interest." *Id.* (internal quotations omitted). If confirmed, I would faithfully apply the Court's holding in *Glucksberg* if I was confronted with a question involving an asserted unenumerated right.

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

   Response: My judicial philosophy is that trial court judges are the gatekeepers of fairness and equal justice under the law. If confirmed, I will faithfully uphold the Constitution and the laws of the United States, and I will apply the law without fear or favor. I will take each case individually, carefully review the facts, and apply the law and applicable precedent to the facts. I will treat litigants with respect and ensure that cases move diligently. I believe the Justices of the Supreme Court have generally all believed that equal justice under the law and fair application of the law is critical to the functioning of our judicial system and our nation.

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

   Response: Blacks's Law Dictionary defines originalism as "the theory that the U.S. Constitution should be interpreted according to the intent of those who drafted and adopted it." I would not use any particular label to describe my judicial approach. To the extent Supreme Court or Eleventh Circuit precedent employs originalism as a method of interpreting a particular provision of the Constitution, I would follow that precedent if confirmed.

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

   Response: Supreme Court Justice Scalia's dissent in *McCreary County, Ky. v.*

American Civil Liberties Union on Ky. referred to the interpretative method of a "living constitution" as "expound[ing] the meaning of constitutional provisions with one eye toward our Nation's history and the other fixed on its democratic aspirations." 545 U.S. 844, 899 (2005) (quoting Justice Stevens' dissent in *Van Orden v. Perry*, 545 U.S. 677 (2005)). I would not use any particular label to describe my judicial approach. I am not aware of any binding Supreme Court or Eleventh Circuit precedent that applies this standard, but if confirmed, I would follow any relevant precedent in interpreting provisions of the Constitution.

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

Response: Yes. While constitutional issues of first impression are rare, if I were confronted with an issue requiring the determination of the meaning of a constitutional provision, I would first look to the plain text of the Constitution and determine the "normal and ordinary" meaning of the text. *See District of Columbia v. Heller*, 554 U.S. 570 (2008). Where the text is "plain and clear, resort to collateral aids to interpretation is unnecessary and cannot be indulged in to narrow or enlarge the text." *McPherson v. Blacker,* 146 U.S. 1, 27 (1892).

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: Usually, no. 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, Georgia*, 590 U.S. 644, 654 (2020). Similarly, the Court has held that the meaning of the Constitution is fixed "according to the understandings of those who ratified it." *New York Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1, 28 (2022). The Court has explained, however, that "the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated." *Id.* And, when interpreting the Eighth Amendment, the Court considers "the evolving standards of decency that mark the progress of a maturing society." *Estelle v. Gamble*, 429 U.S. 97, 103 (1976). If confirmed, I would faithfully apply Supreme Court and Eleventh Circuit precedent to interpret the meaning of any statute or provision of the Constitution.

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 described the Constitition as a document "intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs," and its meaning "is fixed according to the understandings of those who ratified it." *New York Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1, 28 (2022). Please see also my response to Question 7.

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 nominee to the United States District Court, the Code of Conduct for United States Judges provides that I should refrain from making public comment on pending or impending matters in any court, and to avoid any act that might reflect prejudgment of a particular issue or impaired impartiality, such as commenting whether a case was "correctly decided." The Supreme Court's decision in *Dobbs v. Jackson Women's Health* is binding precedent which, if confirmed, I would faithfully and fully apply.

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

Response: Yes.

a. **Was it correctly decided?**

Response: As a nominee to the United States District Court, the Code of Conduct for United States Judges provides that I should refrain from making public comment on pending or impending matters in any court, and to avoid any act that might reflect prejudgment of a particular issue or impaired impartiality, such as commenting whether a case was "correctly decided." The Supreme Court's decision in *Cooper v. Aaron* is binding precedent which, if confirmed, I would faithfully and fully apply.

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 nominee to the United States District Court, the Code of Conduct for United States Judges provides that I should refrain from making public comment on pending or impending matters in any court, and to avoid any act that might reflect prejudgment of a particular issue or impaired impartiality, such as commenting whether a case was "correctly decided." The Supreme Court's decision in *New York State Rifle & Pistol Association v. Bruen* is binding precedent which, if confirmed, I would faithfully and fully apply.

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

Response: Yes.

a. **Was it correctly decided?**

Response: As a nominee to the United States District Court, the Code of Conduct for United States Judges provides that I should refrain from making public comment on pending or impending matters in any court and to avoid any act that might reflect prejudgment of a particular issue or impaired impartiality. Because *Brown v. Board of Education* is no longer pending or impending in any court and the matter of racial segregation in public schools is unlikely to be relitigated, consistent with the judicial canons, I am comfortable expressing my view that *Brown* was correctly decided.

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 nominee to the United States District Court, the Code of Conduct for United States Judges provides that I should refrain from making public comment on pending or impending matters in any court, and to avoid any act that might reflect prejudgment of a particular issue or impaired impartiality, such as commenting whether a case was "correctly decided." The Supreme Court's decision in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College* is binding precedent which, if confirmed, I would faithfully and fully apply.

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

Response: Yes.

a. **Was it correctly decided?**

Response: As a nominee to the United States District Court, the Code of Conduct for United States Judges provides that I should refrain from making public comment on pending or impending matters in any court, and to avoid any act that might reflect prejudgment of a particular issue or impaired impartiality, such as commenting whether a case was "correctly decided." The Supreme Court's decision in *Gibbons v. Ogden* is binding precedent which, if confirmed, I would faithfully and fully apply.

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 nominee to the United States District Court, the Code of Conduct for United States Judges provides that I should refrain from making public comment on pending or impending matters in any court, and to avoid any act that might reflect prejudgment of a particular issue or impaired impartiality, such as commenting whether a case was "correctly decided." The Supreme Court's decision in *Loper Bright Enterprises v. Raimondo* is binding precedent which, if confirmed, I would faithfully and fully apply.

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

Response: No. *See Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244, 2273 (2024) ("Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority, as the APA requires. Careful attention to the judgment of the Executive Branch may help inform that inquiry. . . But courts need not and under the APA may not defer to an agency interpretation of the law simply because a statute is ambiguous.").

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

Response: The Bail Reform Act of 1984 provides that there is a rebuttable presumption in favor of detention if the defendant had been convicted of a felony offense not more than five years prior (specifically described in 18 U.S.C. § 3142(f)(1)), while on release pending trial. Under 18 U.S.C. § 3142(e)(3), if there is probable cause to believe that the defendant committed a drug offense punishable by a maximum term of imprisonment of ten years or more, certain violent crimes, trafficking offenses punishable by imprisonment of 20 years or more, and offenses involving a minor victim, there is a rebuttable presumption that "no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community."

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

Response: Pretrial detention is designed to assure the appearance of the person as required and the safety of the community. *See* 18 U.S.C. § 3142.

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. The Religious Freedom Restoration Act (RFRA) prohibits the

government from substantially burdening a person's exercise of religion unless the government demonstrates the burden on the person "is in furtherance of a compelling governmental interest and [] is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. §§ 2000bb-1(a), (b). The Supreme Court has held that RFRA's protections apply to the sincere exercise of religion by closely-held corporations. *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014) (holding that a government mandate requiring employers to provide coverage for contraception violated RFRA). The First Amendment also protects the sincere exercise of religion by owners of businesses. *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023) (holding the government could not compel the owner of a limited liability company to "produce[] speech that violates their beliefs").

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

Response: The First Amendment to the Constitution provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." Discrimination based on religion is prohibited in most contexts by the Civil Rights Act of 1964, the Religious Land Use and Institutionalized Persons Act, and the Religious Freedom Restoration Act. *See Ramirez v. Collier*, 595 U.S. 411 (2022). Laws that burden the free exercise of religion in a way that is not neutral and generally applicable must pass strict scrutiny. *See Kennedy v. Bremerton School District*, 597 U.S. 507 (2022).

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

Response: In *Tandon v. Newsom*, 593 U.S. 61 (2021), plaintiffs who wished to gather for at-home religious exercise applied for injunctive relief to prevent the state of California from enforcing COVID-19 restrictions that prohibited such gatherings. The Court granted the plaintiffs' injunctive relief pending disposition of the case, and it held that the plaintiffs were likely to succeed on the merits of their free exercise claim that the restrictions did not pass strict scrutiny because they treated "some comparable secular activities more favorably than at-home religious exercise." *Id.* at 63.

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

Response: Yes. *See Kennedy v. Bremerton School District*, 597 U.S. 507, 524 (2022) (The Free Exercise Clause "protects not only the right to harbor religious beliefs inwardly and secretly. It does perhaps its most important work by protecting the ability of those who hold religious beliefs of all kinds to live out their faiths in daily life through 'the performance of (or abstention from) physical acts.'").

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*, 584 U.S. 617 (2018), the plaintiff, a cakeshop owner, challenged the Colorado Civil Rights Commission's finding that his refusal to create a cake for a same-sex wedding was a violation of the Colorado Anti-Discrimination Act. The Supreme Court held that the Commission's decision violated the cakeshop owner's First Amendment rights because it did not apply the law "in a manner that is neutral toward religion" and showed "elements of a clear and impermissible hostility toward the sincere religious beliefs motivating his objection." *Id.* at 618, 640.

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*, 600 U.S. 570 (2023), the plaintiff, a website and graphic design business, sought to enjoin the Colorado Civil Rights Commission from forcing the business to create speech via a wedding website that was inconsistent with the owner's religious belief that marriage should be reserved to unions between one man and one woman. The Supreme Court held that the First Amendment protects a website designer from being forced to "create expressive designs speaking messages with which the designer disagrees." *Id.*

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, as long as the religious belief is sincerely held. *See Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014) ("federal courts have no business addressing [] whether the religious belief asserted in a RFRA case is reasonable"); *Hernandez v. C.I.R.*, 490 U.S. 680 (1989) ("It is not within the judicial ken to question the centrality of particular beliefs or practices to a faith, or the validity of particular litigants' interpretations of those creeds.").

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

Response: Yes, as long as the interpretation is a sincerely held religious belief. *See Thomas v. Review Bd. of Indiana Employment Sec. Division*, 450 U.S. 707, 713-14 (1981) ("Only beliefs rooted in religion are protected by the Free Exercise Clause, which, by its terms, gives special protection to the exercise of religion. The determination of what is a 'religious' belief or practice is more often than not a difficult and delicate task, . . . However, the resolution of that question is not to turn upon a judicial perception of the particular belief or practice in question; religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection.").

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

Response: Yes, as long as the view or interpretation is a sincerely held religious belief. *See Thomas v. Review Bd. of Indiana Employment Sec. Division*, 450 U.S. 707, 713-14 (1981) ("Only beliefs rooted in religion are protected by the Free Exercise Clause, which, by its terms, gives special protection to the exercise of religion. The determination of what is a 'religious' belief or practice is more often than not a difficult and delicate task, . . . However, the resolution of that question is not to turn upon a judicial perception of the particular belief or practice in question; religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection.").

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

Response: I am not aware of the official position of the Catholic Church on this or any other topic. If confronted with a case raising this question, I will follow Supreme Court and Eleventh Circuit precedent regarding First Amendment religious protections under the Constitution and federal law.

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 Guadelupe School v. Morrissey-Berru*, 591 U.S. 732 (2020), the Supreme Court held that two teachers' claims of age and disability discrimination by their respective employers, two Catholic elementary schools, were barred by the ministerial exception to certain employment discrimination statutes. *Id.* at 746 ("courts are bound to stay out of employment disputes involving those holding certain important positions with churches and other religious institutions."). While the teachers were not ministers by title, the Court reasoned that the exception applied because they "both performed vital religious duties," and "their schools expressly saw them as playing a vital part in carrying out the mission of the church." *Id.* at 756-57.

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, Pa.,* 593 U.S. 522 (2021), the Supreme Court held that the City of Philadelphia's refusal to grant an exception to Catholic Social Services (CSS) regarding the City's requirement that same-sex couples be certified as foster parents did not pass strict scrutiny. Specifically, the Court reasoned that the City's stated interests in maximizing the number of foster families, limiting

liability, and equal treatment of prospective foster parents and foster children were insufficient to satisfy strict scrutiny because (1) it was more likely that including CSS in the program would increase the number of available foster parents; (2) the City was speculating that it might be sued if an exception was granted to CSS; and (3) the City had granted exceptions to others. *Id.* at 541-42.

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 reaffirmed its prior holdings in *Trinity Lutheran* and *Espinoza*, which held that states "need not subsidize private education, but once a State decides to do so, it cannot disqualify some private schools solely because they are religious." *Id.* at 779-80. The Court reasoned that Maine's "interest in separating church and state 'more fiercely' than the Federal Constitution . . . 'cannot qualify as compelling' in the face of the infringement of free exercise,"' and therefore, its tuition assistance program did not pass strict scrutiny. *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 District,* 597 U.S. 507 (2022), the Supreme Court held that a school district violated a former football coach's rights under the Free Exercise and Free Speech Clauses of the First Amendment when it suspended his employment for kneeling to pray with students at football games. The Court reasoned that the district's concern with potentially violating the Establishment Clause was not a justification for "actual violations of an individual's First Amendment rights." *Id.* at 543. Because the district's suspension of the football coach was based, at least in part, on his exercise of religion, and his prayers were private speech, not connected to his role as a district employee, the district's decision to suspend him violated the First Amendment and did not pass strict scrutiny. *Id.* at 525-32.

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 Supreme Court vacated a judgment in favor of a County requirement that most homes, including Amish homes, have modern septic systems in light of its decision in *Fulton v. City of Philadelphia, Pa.*, 593 U.S. 522 (2021). Justice Gorsuch's concurrence explained that the Religious Land Use and Institutionalized Persons Act (RLUIPA) required the County to demonstrate "not whether [it] has a compelling interest in enforcing its septic system requirement *generally*, but whether it has such an interest in denying an exception [to the Amish] *specifically*." *Id.* at 2432. Justice Gorsuch argued that, because

the County failed to "offer a compelling explanation why the same flexibility extended to others cannot be extended to the Amish," the law did not pass strict scrutiny. *Id.* Justice Gorsuch reasoned further that the County's "bureaucratic inflexibility" regarding alternatives to modern septic systems in Amish homes was "precisely [what] RLUIPA was designed to prevent." *Id.* at 2434.

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 nominee to the United States District Court, the Code of Conduct for United States Judges provides that I should refrain from making public comment on pending or impending matters in any court and to avoid any act that might reflect prejudgment of a particular issue or impaired impartiality. That judicial canon includes public comment on how I might interpret a statute under specific facts. While there is no Supreme Court or Eleventh Circuit precedent that addresses the interaction between 18 U.S.C. § 1507 and the First Amendment, if confirmed, I would follow any relevant First Amendment Supreme Court and Eleventh Circuit precedent and apply the law faithfully and fully.

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

Response: Article II, Section 2 of the Constitution provides that the President has the power to make political appointments, with the advice and consent of the Senate. If confirmed, I would faithfully apply Supreme Court and Eleventh Circuit precedent if confronted with this issue.

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

Response: A racially disparate outcome of a program or policy is not itself sufficient to establish purposeful racial discrimination in violation of the Equal Protection Clause. *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 265 (1977). Under some federal statutes, evidence of the racially disparate impact of a practice or policy can constitute discrimination. *See, e.g., Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. 519 (2015).

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

Response: The issue of whether to expand or contract the U.S. Supreme Court is a matter for policymakers. As a nominee to the United States District Court, the Code of Conduct for United States Judges provides that I should refrain from making public comment on pending or impending matters in any court and to avoid any act that might reflect prejudgment of a particular issue or impaired impartiality. That judicial canon includes public comment on whether Congress should or should not take an action.

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

Response: No, all of the current Justices of the United States Supreme Court were appointed and confirmed pursuant to Article II, Section 2 of the Constitution.

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

Response: The Second Amendment to the U.S. Constitution guarantees an individual right to bear arms, which shall not be abridged unless the government regulation is consistent with our nation's historical tradition of firearm regulation. *New York Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022).

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

Response: In *United States v. Rahimi,* 144 S. Ct. 1889 (2024), the Supreme Court held that 18 U.S.C. § 922(g)(8)'s prohibition on firearm possession by an individual subject to a domestic violation restraining order was constitutional in light of our nation's historical tradition of disarming individuals who pose a credible threat of physical violence to another. Justice Thomas dissented on the ground that no prior laws in our nation's history disarmed people on the basis of "preventing interpersonal violence," like 18 U.S.C. § 922(g)(8), but instead were concerned with "preventing insurrection and armed rebellion." *Id.* at 1933-35. Justice Thomas reasoned that, historically, surety laws were designed, through a "less burdensome regime," to address future interpersonal violence, whereas § 922(g)(8) "strips an individual of his Second Amendment right" through "sweeping prohibitions [which] are criminally enforced." *Id.* at 1939-41. Finally, Justice Thomas's dissent warns that a principle-based approach, such as a "law-abiding, dangerous citizen" test, would give Congress the power to "impose any firearm regulation so long as it targets 'unfit' persons." *Id.* 1945-46.

39. **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: Generally, any restriction on the right to bear arms that is not consistent with our Nation's historical tradition of firearms regulation is prohibited by the Second Amendment. *See New York Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022). *Heller* held that a statute banning handgun possession in the home and a trigger-lock requirement for lawful firearms violated the Second Amendment. *District of Columbia v. Heller*, 554 U.S. 570 (2008). The Court's decision in *McDonald* similarly held that a city statute banning handgun possession by most private citizens also violated the Second Amendment. *McDonald v. City of Chicago, Ill.*, 561 U.S. 742 (2010). In *Bruen*, the Court held that a statute requiring the demonstration of a special need for self-protection in order to obtain a license to carry a handgun in public was unconstitutional. *Bruen*, 597 U.S. 1 (2022). The Court's decision in *Rahimi* clarified that its standard in *Bruen* did not require a "historical twin" but rather a "historical analogue," and held that 18 U.S.C. § 922(g)(8) was constitutional. *United States v. Rahimi*, 144 S. Ct. 1889 (2024).

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

Response: Please see my response to Question 37.

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

Response: No. Regulation of the right to bear arms guaranteed by the Second

Amendment, unlike many rights specifically enumerated in the Constitution, is not subject to means-end scrutiny. *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1, 24 (2022). The government may not abridge the right to bear arms unless the regulation is consistent with our nation's historical tradition of firearm regulation. *Id.*

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

Response: No. In *New York Rifle & Pistol Association, Inc. v. Bruen*, the Supreme Court held that the government may not regulate the Second Amendment right to bear arms unless it can show the regulation is consistent with the nation's historical tradition of firearm regulation. 597 U.S. 1, 24 (2022). The Supreme Court has made clear that "the constitutional right to bear arms in public for self-defense is not a 'second class right subject to an entirely different body of rules than the other Bill of Rights guarantees.'" *Id.* at 70 (quoting *McDonald v. City of Chicago*, 561 U.S. 742, 780 (2010)).

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

Response: Under Article II, Section 1 of the Constitution, the President is vested with the power to enforce laws, and Section 3 provides that the President shall take care that the law is faithfully executed. In *United States v. Texas*, the Supreme Court held that constitutional separation of powers generally precludes federal courts from considering whether "the Executive Branch should make more arrests or bring more prosecutions." 599 U.S. 670, 680-81 (2023). But, in holding the plaintiffs lacked standing, the Court reasoned that executive discretion is generally necessary "because the Executive Branch (i) invariably lacks the resources to arrest and prosecute every violator of every law and (ii) must constantly react and adjust to the ever-shifting public safety and public-welfaire needs of the American people." *Id.* at 680.

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

Response: In *United States v. Texas*, 599 U.S. 670 (2023), the Supreme Court distinguished between the Executive Branch "wholly abandon[ing] its statutory responsibilities to make arrests or bring prosecutions" and the Executive Branch's discretion to "prioritize its enforcement efforts." The Court reasoned that executive discretion is necessary "because the Executive Branch (i) invariably lacks the resources to arrest and prosecute every violator of every law and (ii) must constantly react and adjust to the ever-shifting public safety and public-welfaire needs of the American people." *Id.* at 680. In contrast, the Court explained that, under the Administrative Procedures Act, "a plaintiff arguably could obtain review of agency non-enforcement if an agency 'has consciously and expressly adopted a general policy that is so extreme as to amount to an abdication of its statutory responsibilities.'" *Id.* at 682-83.

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

Response: No.

46. **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 Supreme Court vacated a stay of the judgment finding that the CDC's COVID-19 nationwide eviction moratorium for residential rental properties was invalid. An association of realtors challenged the moratorium on the ground that the CDC exceeded its statutory authority. The Supreme Court held that the association was likely to succeed on the merits because the plain text of the relevant statute did not permit such a broad interpretation of the CDC's authority. *Id.* at 763-64 (the "downstream connection between eviction and the interstate spread of disease is markedly different from the direct targeting of disease that characterizes the measures identified in the statute."). The Court also applied the major question doctrine in holding that the CDC's claimed authority would have "vast economic and political significance" and would "intrude[] into an area that is the particular domain of state law: the landlord-tenant relationship." *Id.* at 764. The Court also concluded that the equities did not counsel in favor of the CDC moratorium because the association and landlords faced risk of irreparable harm from sustained unpaid rents, and "[w]hatever interest the Government had in maintaining the moratorium's original end date to ensure the orderly administration of those [rental-assistance] programs [had] since diminished." *Id*. at 765-66.

47. **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: Generally, no. The Justice Manual provides that Department of Justice personnel "should presume that non-public, sensitive information obtained in connection with work is protected from disclosure, except as needed to fulfill official duties of DOJ personnel, and as allowed by court order, statutory or regulatory prescription, or case law and rules governing criminal and civil discovery." Justice Manual § 1-7.100. Further, prosecutors should avoid implying that any request to open an investigation will lead to an investigation, and "DOJ ordinarily does not confirm or deny the existence of an investigation." Justice Manual § 1-7.410.

48. **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 is absolutely immune from criminal prosecution for conduct within his or her exclusive sphere of constitutional authority, the President enjoys presumptive immunity from criminal prosection for official presidential acts, and there is no

immunity for unofficial acts of the President. The Court reasoned that constitutional separation of powers prohibits Congress from acting on, and courts from examining, presidential actions "on subjects within his 'conclusive and preclusive' constitutional authority." *Id.* at 2328. For other official acts of the President, the Court reasoned that the President "would be chilled from taking the 'bold and unhesitating action' required of an independing Executive," where a "President inclined to take one course of action based on the public interest may instead opt for another, apprehensive that criminal penalties may befall him upon his departure from office." *Id.* at 2330-31. However, because of the competing and compelling interest in "fair and effective law enforcement," the Court concluded that presumptive immunity for official acts is appropriate to "safeguard the independence and effective functioning of the Executive Branch." *Id.* at 2331-32.

49. **Is it correct that you have served as an AUSA for approximately seven years?**

Response: I have served as an AUSA since January 2017, which is nearly eight years.

50. **Is it correct that during that time, you have only prosecuted one federal jury trial to verdict?**

Response: Yes, I have tried one criminal jury trial to verdict as an AUSA. In that time, I have also prepared two fraud prosecutions for trial, but the defendants chose to plead guilty on the first day of each scheduled trial. In addition, as a commercial litigator in private practice before I joined the U.S. Attorney's Office, I tried two trials as sole counsel in Georgia state courts. Outside of the jury trial context, I have litigated numerous matters as sole counsel to final decision through summary judgment or guilty plea, or a final decision by an appeals court. I have also argued three appeals and briefed approximately ten appeals before the U.S. Court of Appeals for the Eleventh Circuit.

51. **Is it correct that in that case, *United States v. Bickers*, you were not the sole prosecutor but one of four Assistant United States Attorneys? Please describe your role (i.e, lead counsel, first-chair, second chair, third-chair, etc.).**

Response: No. I was one of three Assistant United States Attorneys who tried *United States v. Bickers*. During that three-week trial, the labor was divided equally. I was responsible for all pre-trial briefing, including approximately ten motions *in limine* and responses to defense motions, direct examination of approximately 20 government witnesses, evidentiary argument during trial, sentencing, appellate briefing, and appellate argument to the Eleventh Circuit.

52. **Is it correct that you have not served as counsel at a federal bench trial through the judge's final decision?**

Response: Yes. I have served as sole counsel in two state bench trials through a final verdict, and I have tried one criminal jury trial to verdict. I have also prepared two fraud

prosecutions for trial, but the defendants chose to plead guilty on the first day of each scheduled trial. Outside of the trial context, I have litigated numerous matters as sole counsel to final decision through summary judgment or guilty plea, or a final decision by an appeals court. I have also argued three appeals and briefed approximately ten appeals before the U.S. Court of Appeals for the Eleventh Circuit.

53. **You are being nominated for a federal trial court judgeship. Do you believe that a nominee for a federal trial court judgeship should have experience practicing as a trial lawyer in front of a federal trial court judge?**

Response: Because the President has the sole discretion to nominate federal judges, and the Senate has the authority to advise and consent as to the nominees, I cannot speak to what experience a federal trial court judge should have in the President's and Senate's discretion. I do, however, have significant federal experience litigating in district court in the kinds of motion practice, hearings, and other proceedings that regularly occur in the the Northern District of Georgia. I have litigated in federal court in complex civil matters since 2012, and I have briefed numerous motions to dismiss, motions for summary judgment, discovery motions, and argued those same motions. I have briefed numerous civil appeals to the Eleventh Circuit and represented the United States in oral argument in two of those cases. In the last four years as a criminal AUSA, I have appeared in federal court frequently, handling search warrants, initial appearances, arraignments, preliminary and detention hearings, suppression hearings, supervised release revocation hearings, guilty pleas, and sentencing hearings. I have also briefed criminal appeals before the Eleventh Circuit, and successfully argued an appeal in *United States v. Bickers*.

54. **Have you yourself ever presented a motion before a trial court judge? If yes, how many times? Please provide all applicable citation(s).**

Response: Yes. Over my career, I have presented well over 100 written and oral motions before trial court judges in both civil and criminal cases, in state and federal court. The dockets for all of my federal cases in the Northern District of Georgia and most of the cases I have litigated in state court are publicly available.

55. **Have you yourself ever delivered an opening statement before a trial court judge? If yes, how many times? Please provide all applicable citation(s).**

Response: Yes, I delivered opening statements in two bench trials in state court. *See Gaines v. Regions Bank*, No. MV2014142767 (Hall County Magistrate Court, 2014); *Thompson v. Nguyen*, No. 2013CM237639 (Clayton County Magistrate Court, 2014).

56. **Have you yourself ever delivered a closing statement before a trial court judge? If yes, how many times? Please provide all applicable citation(s).**

Response: Yes, I delivered closing arguments in two bench trials in state court. *See Gaines v. Regions Bank*, No. MV2014142767 (Hall County Magistrate Court, 2014);

Thompson v. Nguyen, No. 2013CM237639 (Clayton County Magistrate Court, 2014).

57. **Have you yourself ever delivered an opening statement before a jury? If yes, how many times? Please provide all applicable citation(s).**

Response: I have delivered two opening statements in state court bench trials that I tried to verdict as sole counsel, but not before a federal jury.

58. **Have you yourself ever delivered a closing statement before a jury? If yes, how many times? Please provide all applicable citation(s).**

Response: I have delivered two closing arguments in state court bench trials that I tried to verdict as sole counsel, but not before a federal jury.