Nomination of John W. Holcomb to the United States District Court for the Central District of California
Questions for the Record
Submitted June 24, 2020

QUESTIONS FROM SENATOR FEINSTEIN

1. Please respond with your views on the proper application of precedent by judges.

   a. **When, if ever, is it appropriate for lower courts to depart from Supreme Court precedent?**

      It is never appropriate for lower courts to depart from Supreme Court precedent.

   b. **Do you believe it is proper for a district court judge to question Supreme Court precedent in a concurring opinion? What about a dissent?**

      District judges do not typically write concurring or dissenting opinions, except in the rare circumstances when they are sitting pursuant to the Three-Judge Court Act or by designation on a court of appeals. In every circumstance, district judges must fully and faithfully follow Supreme Court precedent. In *Hart v. Massanari*, 266 F.3d 1155 (9th Cir. 2001), the Ninth Circuit noted that a Supreme Court decision is binding authority "unless and until the Supreme Court itself overrules or modifies it. Judges of the inferior courts may voice their criticisms, but follow it they must." *Id.* at 1171.

   c. **When, in your view, is it appropriate for a district court to overturn its own precedent?**

      District court decisions do not create precedent. *See Camreta v. Greene*, 563 U.S. 692, 709 n.7 (2011). Rules 59 and 60 of the Federal Rules of Civil Procedure govern the circumstances under which a district court may alter or amend a judgment or provide relief from a judgment or order.

   d. **When, in your view, is it appropriate for the Supreme Court to overturn its own precedent?**

      The Supreme Court controls its docket, and it may revisit its own precedent as it sees fit. With respect, it would be inappropriate for me, as a nominee for the district court, to comment on when the Supreme Court should overturn any of its own precedent. If I am confirmed, I will fully and faithfully follow all Supreme Court precedent.

2. When Chief Justice Roberts was before the Committee for his nomination, Senator Specter referred to the history and precedent of *Roe v. Wade* as "super-stare decisis." A text book on the law of judicial precedent, co-authored by Justice Neil Gorsuch, refers to *Roe v. Wade* as a "super-precedent" because it has survived more than three dozen attempts to overturn it. (The Law of Judicial Precedent, Thomas West, p. 802 (2016).) The book

explains that "superprecedent" is "precedent that defines the law and its requirements so effectively that it prevents divergent holdings in later legal decisions on similar facts or induces disputants to settle their claims without litigation." (The Law of Judicial Precedent, Thomas West, p. 802 (2016))

a. **Do you agree that *Roe v. Wade* is "super-stare decisis"? Do you agree it is "superprecedent"?**

   District judges must always fully and faithfully follow all Supreme Court precedent, including *Roe v. Wade*, 410 U.S. 113 (1973).

b. **Is it settled law?**

   Yes, *Roe v. Wade*, 410 U.S. 113 (1973), is settled law. If I am confirmed, I will fully and faithfully follow all Supreme Court precedent, including *Roe*.

3. In *Obergefell v. Hodges*, the Supreme Court held that the Constitution guarantees same-sex couples the right to marry. **Is the holding in *Obergefell* settled law?**

   Yes, *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), is settled law. If I am confirmed, I will fully and faithfully follow all Supreme Court precedent, including *Obergefell*.

4. In Justice Stevens's dissent in *District of Columbia v. Heller* he wrote: "The Second Amendment was adopted to protect the right of the people of each of the several States to maintain a well-regulated militia. It was a response to concerns raised during the ratification of the Constitution that the power of Congress to disarm the state militias and create a national standing army posed an intolerable threat to the sovereignty of the several States. Neither the text of the Amendment nor the arguments advanced by its proponents evidenced the slightest interest in limiting any legislature's authority to regulate private civilian uses of firearms."

a. **Do you agree with Justice Stevens? Why or why not?**

   In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court recognized an individual right to keep and bear arms. With respect, it would be inappropriate for me, as a nominee for the district court, to comment on the propriety of that decision, including the statements that Justice Stevens made in his dissent. If I am confirmed, I will fully and faithfully follow all Supreme Court precedent, including *Heller*.

b. **Did *Heller* leave room for common-sense gun regulation?**

   In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court stated that "nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the

commercial sale of arms." *Id.* at 626-27. If I am confirmed, I will fully and faithfully follow all Supreme Court precedent, including *Heller*.

c. **Did *Heller*, in finding an individual right to bear arms, depart from decades of Supreme Court precedent?**

With respect, it would be inappropriate for me, as a nominee for the district court, to comment on the propriety of the Supreme Court's decision in *District of Columbia v. Heller*, 554 U.S. 570 (2008), including whether, in reaching that decision, the Court departed from decades of its precedent. If I am confirmed, I will fully and faithfully follow all Supreme Court precedent, including *Heller*.

5. In *Citizens United v. FEC*, the Supreme Court held that corporations have free speech rights under the First Amendment and that any attempt to limit corporations' independent political expenditures is unconstitutional. This decision opened the floodgates to unprecedented sums of dark money in the political process.

a. **Do you believe that corporations have First Amendment rights that are equal to individuals' First Amendment rights?**

In *Citizens United v. Federal Election Comm'n*, 558 U.S. 310 (2010), the Supreme Court recognized a corporation's First Amendment right to engage in political speech. With respect, it would be inappropriate for me, as a nominee for the district court, to comment on the propriety of that decision, including whether corporations have First Amendment rights that are equal to individuals' First Amendment rights. If I am confirmed, I will fully and faithfully follow all Supreme Court precedent, including *Citizens United*.

b. **Do individuals have a First Amendment interest in not having their individual speech drowned out by wealthy corporations?**

With respect, it would be inappropriate for me, as a nominee for the district court, to comment on the propriety of the Supreme Court's decision in *Citizens United v. Federal Election Comm'n*, 558 U.S. 310 (2010), including whether corporations have First Amendment rights that are equal to individuals' First Amendment rights. If I am confirmed, I will fully and faithfully follow all Supreme Court precedent, including *Citizens United*.

c. **Do you believe corporations also have a right to freedom of religion under the First Amendment?**

In *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014), the Supreme Court determined that the Religious Freedom Restoration Act of 1993, which protects a person's exercise of religion from infringement by the federal government, applies to for-profit corporations. The Court also held that its "decision on that statutory question makes it unnecessary to reach the First Amendment claim." *Id.* at 736. That constitutional question is likely to arise in the future. Accordingly, with respect, it would be inappropriate for me, as a nominee for the district court, to

comment on this issue. *See* Code of Conduct for United States Judges, Canon 3(A)(6). If I am confirmed, I will fully and faithfully follow all Supreme Court precedent, including *Hobby Lobby*.

6. Does the Equal Protection Clause of the Fourteenth Amendment place any limits on the free exercise of religion?

   Section 1 of the Fourteenth Amendment provides in pertinent part, "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." In *Cantwell v. Connecticut*, 310 U.S. 296 (1940), the Supreme Court held that the Fourteenth Amendment incorporates the First Amendment's free exercise clause and makes it applicable to state governments. If I am confirmed, I will fully and faithfully follow all Supreme Court precedent, including the Court's interpretation of the First and Fourteenth Amendments.

7. Would it violate the Equal Protection Clause of the Fourteenth Amendment if a county clerk refused to provide a marriage license for an interracial couple if interracial marriage violated the clerk's sincerely held religious beliefs?

   In *Loving v. Virginia*, 388 U.S. 1 (1967), the Supreme Court held that state laws prohibiting interracial marriage violate the Equal Protection Clause of the Fourteenth Amendment. The question posed potentially raises the issue of the clash of Fourteenth Amendment equal protection rights and First Amendment free exercise rights. That constitutional question is likely to arise in the future. Accordingly, with respect, it would be inappropriate for me, as a nominee for the district court, to comment on this issue. *See* Code of Conduct for United States Judges, Canon 3(A)(6). If I am confirmed, I will fully and faithfully follow all Supreme Court precedent, including *Loving*.

8. Could a florist refuse to provide services for an interracial wedding if interracial marriage violated the florist's sincerely held religious beliefs?

   Please see my response to Question 7 above.

9. You indicated on your Senate Questionnaire that you have been a member of the Federalist Society since 1992. The Federalist Society's "About Us" webpage explains the purpose of the organization as follows: "Law schools and the legal profession are currently strongly dominated by a form of orthodox liberal ideology which advocates a centralized and uniform society. While some members of the academic community have dissented from these views, by and large they are taught simultaneously with (and indeed as if they were) the law." It says that the Federalist Society seeks to "reorder[] priorities within the legal system to place a premium on individual liberty, traditional values, and the rule of law. It also requires restoring the recognition of the importance of these norms among lawyers, judges, law students and professors. In working to achieve these goals, the Society has created a conservative and libertarian intellectual network that extends to all levels of the legal community."

a. **Could you please elaborate on the "form of orthodox liberal ideology which advocates a centralized and uniform society" that the Federalist Society claims dominates law schools?**

   I had never read that statement on the Federalist Society's website before reviewing this question. I did not make the quoted statement, and I have never discussed that statement with anyone. I do not know what the Federalist Society means by that statement.

b. **How exactly does the Federalist Society seek to "reorder priorities within the legal system"?**

   I had never read that statement on the Federalist Society's website before reviewing this question. I did not make the quoted statement, and I have never discussed that statement with anyone. I do not know what the Federalist Society means by that statement.

c. **What "traditional values" does the Federalist society seek to place a premium on?**

   I had never read that statement on the Federalist Society's website before reviewing this question. I did not make the quoted statement, and I have never discussed that statement with anyone. I do not know what the Federalist Society means by that statement.

d. **Have you had any contact with anyone at the Federalist Society about your possible nomination to any federal court? If so, please identify when, who was involved, and what was discussed.**

   I became interested in a nomination as a district judge in April 2017. Since then, I have discussed my application to the district court and my subsequent nomination with many friends, colleagues, and acquaintances, some of whom are members of the Federalist Society. In late 2018 and early 2019, I had brief contact with Leonard Leo, who was then the Executive Vice President of the Federalist Society, regarding my application to be a district judge. To my knowledge, Mr. Leo played no role in my ultimate nomination.

e. **Was it at any time communicated to you that membership in the Federalist Society would make your judicial nomination more likely? If so, who communicated it to you and in what context?**

   No.

In January 2020, the Committee on Codes of Conduct of the U.S. Judicial Conference circulated a draft ethics opinion which stated that "membership in the ACS or the Federalist Society is inconsistent with obligations imposed by the Code [of Judicial Conduct]." (*Draft*

Ethics Opinion No. 117: Judges' Involvement With the American Constitution Society, the Federalist Society, and the American Bar Association (Jan. 2020))

f. **Were you aware of this ethics opinion? If so, did you consider relinquishing your membership when you were nominated for this position? If not, why not?**

Yes, I read an article regarding that draft ethics opinion in the January 21, 2020, issue of *The Wall Street Journal*. Yes, I considered relinquishing my membership in the Federalist Society, in view of that draft opinion. I decided to wait to see if the U.S. Judicial Conference adopts that draft ethics opinion as its official position.

g. **If confirmed to the District Court, will you relinquish your membership in the Federalist Society? If not, how do you reconcile membership in the Federalist Society with Canon 4 of the Code of Judicial Conduct?**

I commit to following all applicable ethical rules before participating in, or maintaining my membership in, law-related organizations. Pursuant to the Commentary to the Code of Conduct for United States Judges, Canon 4, and the ethical rules related to Canon 4, I also commit to reassess regularly whether my involvement in extrajudicial activities related to the law is proper under the Code.

10. On February 22, 2018, when speaking to the Conservative Political Action Conference (CPAC), former White House Counsel Don McGahn told the audience about the Administration's interview process for judicial nominees. He said: "On the judicial piece … one of the things we interview on is their views on administrative law. And what you're seeing is the President nominating a number of people who have some experience, if not expertise, in dealing with the government, particularly the regulatory apparatus. This is different than judicial selection in past years…"

a. **Did anyone in this Administration, including at the White House or the Department of Justice, ever ask you about your views on any issue related to administrative law, including your "views on administrative law"? If so, by whom, what was asked, and what was your response?**

No.

b. **Since 2016, has anyone with or affiliated with the Federalist Society, the Heritage Foundation, or any other group, asked you about your views on any issue related to administrative law, including your "views on administrative law"? If so, by whom, what was asked, and what was your response?**

No.

c. **What are your "views on administrative law"?**

In *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc*., 467 U.S. 837 (1984), the Supreme Court held that courts generally should defer to a governmental agency's interpretation of a statute if the agency's interpretation is based on a permissible construction of that statute and Congress has not spoken directly to the precise issue in question. In *Auer v. Robbins*, 519 U.S. 452 (1997), the Supreme Court held that courts should generally defer to a governmental agency's reasonable reading of its own regulation. In *Kisor v. Wilkie*, 139 S. Ct. 2400 (2019), the Supreme Court affirmed *Auer* in circumstances where the regulation at issue is genuinely ambiguous and the agency's interpretation of that regulation is reasonable. If I am confirmed, I will fully and faithfully follow all Ninth Circuit and Supreme Court precedent, including *Chevron*, *Auer*, and *Kisor*, regarding administrative law.

11. Do you believe that human activity is contributing to or causing climate change?

    I am not qualified to offer an opinion regarding climate change or its potential causes. Moreover, litigation is currently pending, or is likely to arise in the future, pertaining to the issue of climate change. Accordingly, with respect, it would be inappropriate for me, as a nominee for the district court, to comment on this issue. *See* Code of Conduct for United States Judges, Canon 3(A)(6).

12. When is it appropriate for judges to consider legislative history in construing a statute?

    In *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546 (2005), a case involving the interpretation of the supplemental jurisdiction statute, 28 U.S.C. § 1367, the Supreme Court stated, "[a]s we have repeatedly held, the authoritative statement is the statutory text, not the legislative history or any other extrinsic material. Extrinsic materials have a role in statutory interpretation only to the extent they shed a reliable light on the enacting Legislature's understanding of otherwise ambiguous terms." *Id.* at 568. If I am confirmed, I will fully and faithfully follow all Ninth Circuit and Supreme Court precedent, including *Allapattah*, concerning when and how to consult legislative history in connection with statutory interpretation.

13. At any point during the process that led to your nomination, did you have any discussions with anyone — including, but not limited to, individuals at the White House, at the Justice Department, or any outside groups — about loyalty to President Trump? If so, please elaborate.

    No.

14. Please describe with particularity the process by which you answered these questions.

    I received these Questions for the Record on June 24, 2020. I conducted legal research on the issues that they raise and reviewed the responses of other nominees. I drafted my answers and transmitted a copy to attorneys at the U.S. Department of Justice, who provided some feedback. I reviewed that feedback and made revisions to my answers that I deemed appropriate. I then authorized the submission of my answers to the Senate Judiciary Committee.

Nomination of John William Holcomb
to the United States District Court for the
Central District of California
Questions for the Record
Submitted June 24, 2020

QUESTIONS FROM SENATOR WHITEHOUSE

1. If you have not already done so, please read a copy of the draft Advisory Opinion 117, circulated by the Codes of Conduct Committee of the Judicial Conference of the United States. A draft of the opinion is available here: https://fixthecourt.com/wp-content/uploads/2020/02/Guide-Vol02B-Ch02-AdvOp117.pdf. If the Committee formally adopts its draft Advisory Opinion as written, will you comply with it?

   I commit to following all applicable ethical rules before participating in, or maintaining my membership in, law-related organizations. Pursuant to the Commentary to the Code of Conduct for United States Judges, Canon 4, and the ethical rules related to Canon 4, I also commit to reassess regularly whether my involvement in extrajudicial activities related to the law is proper under the Code.

2. A Washington Post report from May 21, 2019 ("A conservative activist's behind-the-scenes campaign to remake the nation's courts") documented that Federalist Society Executive Vice President Leonard Leo raised $250 million, much of it contributed anonymously, to influence the selection and confirmation of judges to the U.S. Supreme Court, lower federal courts, and state courts. If you haven't already read that story and listened to recording of Mr. Leo published by the Washington Post, I request that you do so in order to fully respond to the following questions.
   a. Have you read the Washington Post story and listened to the associated recordings of Mr. Leo?

      I had never read that *Washington Post* story nor listened to the associated recording before reviewing this question. I have now read that story and listened to that recording.

   b. Do you believe that anonymous or opaque spending related to judicial nominations of the sort described in that story risk corrupting the integrity of the federal judiciary? Please explain your answer.

      With respect, it would be inappropriate for me, as a nominee for the district court, to comment on a political issue such as the propriety of spending related to judicial nominations. *See* Code of Conduct for United States Judges, Canon 5.

   c. Mr. Leo was recorded as saying: "We're going to have to understand that judicial confirmations these days are more like political campaigns." Is that a view you share? Do you believe that the judicial selection process would benefit from the same kinds of spending disclosures that are required for spending on federal elections? If not, why not?

      With respect, it would be inappropriate for me, as a nominee for the district court, to comment on a political issue such as the propriety of spending disclosures in connection with the judicial selection process. *See* Code of Conduct for United States Judges, Canon 5.

d. Do you have any knowledge of Leonard Leo, the Federalist Society, or any of the entities identified in that story taking a position on, or otherwise advocating for or against, your judicial nomination? If you do, please describe the circumstances of that advocacy.

   In late 2018 and early 2019, I had brief contact with Mr. Leo, who was then the Executive Vice President of the Federalist Society, regarding my application to be a district judge. To my knowledge, Mr. Leo played no role in my ultimate nomination.

e. As part of this story, the Washington Post published an audio recording of Leonard Leo stating that he believes we "stand at the threshold of an exciting moment" marked by a "newfound embrace of limited constitutional government in our country [that hasn't happened] since before the New Deal." Do you share the beliefs espoused by Mr. Leo in that recording?

   With respect, it would be inappropriate for me, as a nominee for the district court, to comment on a political issue such as the merits of "limited constitutional government in our country." *See* Code of Conduct for United States Judges, Canon 5.

3. During his confirmation hearing, Chief Justice Roberts likened the judicial role to that of a baseball umpire, saying "'[m]y job is to call balls and strikes and not to pitch or bat."
   a. Do you agree with Justice Roberts' metaphor? Why or why not?

      Yes, I generally agree with Chief Justice Roberts' metaphor equating the judicial role to that of a baseball umpire. In both instances, the judge/umpire is called upon to make decisions/call pitches, based upon the law/rules of the game, fairly and impartially, to the best of his or her ability.

   b. What role, if any, should the practical consequences of a particular ruling play in a judge's rendering of a decision?

      A judge should consider the practical consequences of a prospective ruling when fashioning equitable relief. In *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7 (2008), the Supreme Court noted that "'[i]n exercising their sound discretion, courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction.'" *Id.* at 24 (quoting *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982)).

4. Federal Rule of Civil Procedure 56 provides that a court "shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact" in a case. Do you agree that determining whether there is a "genuine dispute as to any material fact" in a case requires a trial judge to make a subjective determination?

   In *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986), the Supreme Court stated that "the 'genuine issue' summary judgment standard is 'very close' to the 'reasonable jury' directed verdict standard: 'The primary difference between the two motions is procedural; summary judgment motions are usually made before trial and decided on documentary evidence, while directed verdict motions are made at trial and decided on the evidence that has been admitted.'" *Id.* at 251 (quoting *Bill Johnson's Restaurants, Inc. v. NLRB*, 461 U.S. 731, 745 n.11 (1983)). The Court continued, "In essence, though, the inquiry under each is the same: whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Anderson*, 477 U.S. at 251-52.

5. During Justice Sotomayor's confirmation proceedings, President Obama expressed his view that a judge benefits from having a sense of empathy, for instance "to recognize what it's like to be a young teenage mom, the empathy to understand what it's like to be poor or African-American or gay or disabled or old."
   a. What role, if any, should empathy play in a judge's decision-making process?

      In making criminal sentencing decisions, as an example, district judges must consider (among other things) "the history and characteristics of the defendant." 18 U.S.C. § 5335(a)(1). That requirement directs the judge to step into the defendant's shoes and to empathize with his or her conditions and circumstances, as one consideration in the sentencing decision.

   b. What role, if any, should a judge's personal life experience play in his or her decision-making process?

      A judge's personal life experience will necessarily play a role in his or her decision-making process; it is inevitable. However, a judge must guard against importing any bias arising from that life experience into his or her decision-making process. *See* Code of Conduct for United States Judges, Canon 3. A judge must seek and maintain both actual impartiality and the appearance of impartiality. *See id.*, Canon 2(A).

6. In your view, is it ever appropriate for a judge to ignore, disregard, refuse to implement, or issue an order that is contrary to an order from a superior court?

   No.

7. When, if ever, is it appropriate for a district judge to publish an opinion that includes dicta challenging the correctness of a binding precedent?

   In every circumstance, district judges must fully and faithfully follow Supreme Court precedent. In *Hart v. Massanari*, 266 F.3d 1155 (9th Cir. 2001), the Ninth Circuit noted that a Supreme Court decision is binding authority "unless and until the Supreme Court itself overrules or modifies it. Judges of the inferior courts may voice their criticisms, but follow it they must." *Id.* at 1171.

8. When, if ever, is it appropriate for a district judge to publish an opinion that includes a proclamation of the judge's personal policy preferences or political beliefs?

   It is never appropriate for a district judge to publish an opinion that includes a proclamation of the judge's personal policy preferences or political beliefs.

9. The Seventh Amendment ensures the right to a jury "in suits at common law."
   a. What role does the jury play in our constitutional system?

      The Seventh Amendment provides that "[i]n suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law." Rule 38 of the Federal Rules of Civil Procedure implements civil litigants' Seventh Amendment right to a jury trial and specifies when that right may be waived or withdrawn.

b. Should the Seventh Amendment be a concern to judges when adjudicating issues related to the enforceability of mandatory pre-dispute arbitration clauses?

The interplay of the Seventh Amendment's right to a jury trial and the Federal Arbitration Act's abrogation of that right is the subject of pending or impending litigation. Accordingly, with respect, it would be inappropriate for me, as a nominee for the district court, to comment on this issue. *See* Code of Conduct for United States Judges, Canon 3(A)(6).

c. Should an individual's Seventh Amendment rights be a concern to judges when adjudicating issues surrounding the scope and application of the Federal Arbitration Act?

Please see my response to Question 9(b) above.

10. What deference do congressional fact-findings merit when they support legislation expanding or limiting individual rights?

In *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546 (2005), a case involving the interpretation of the supplemental jurisdiction statute, 28 U.S.C. § 1367, the Supreme Court stated, "As we have repeatedly held, the authoritative statement is the statutory text, not the legislative history or any other extrinsic material. Extrinsic materials have a role in statutory interpretation only to the extent they shed a reliable light on the enacting Legislature's understanding of otherwise ambiguous terms." *Id.* at 568. If I am confirmed, I will fully and faithfully follow all Ninth Circuit and Supreme Court precedent, including *Allapattah*, concerning when and how to consult legislative history in connection with statutory interpretation.

11. The Federal Judiciary's Committee on the Codes of Conduct recently issued "Advisory Opinion 116: Participation in Educational Seminars Sponsored by Research Institutes, Think Tanks, Associations, Public Interest Groups, or Other Organizations Engaged in Public Policy Debates." I request that before you complete these questions you review that Advisory Opinion.

a. Have you read Advisory Opinion #116?

Yes.

b. Prior to participating in any educational seminars covered by that opinion will you commit to doing the following?

i. Determining whether the seminar or conference specifically targets judges or judicial employees.

If I am confirmed, in deciding whether to participate in any educational seminar, I will consult, and will comply with, the Code of Conduct for United States Judges, Advisory Opinion #116, and all other applicable statutes, regulations, rules, and authorities.

ii. Determining whether the seminar is supported by private or otherwise anonymous sources.

Please see my response to Question 11(b)(i) above.

iii. Determining whether any of the funding sources for the seminar are engaged in litigation or political advocacy.

Please see my response to Question 11(b)(i) above.

iv. Determining whether the seminar targets a narrow audience of incoming or current judicial employees or judges.

Please see my response to Question 11(b)(i) above.

v. Determining whether the seminar is viewpoint-specific training program that will only benefit a specific constituency, as opposed to the legal system as a whole.

Please see my response to Question 11(b)(i) above.

c. Do you commit to not participate in any educational program that might cause a neutral observer to question whether the sponsoring organization is trying to gain influence with participating judges?

Please see my response to Question 11(b)(i) above.

12. In your view, what is the evidentiary significance of Congress's failure to enact a proposed amendment to a previously enacted statute for how you would interpret the previously enacted statute? In general, what significance do you attach to evidence of Congress's failure to enact any piece of proposed legislation?

In *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546 (2005), a case involving the interpretation of the supplemental jurisdiction statute, 28 U.S.C. § 1367, the Supreme Court stated, "As we have repeatedly held, the authoritative statement is the statutory text, not the legislative history or any other extrinsic material." *Id.* at 568. Congress's failure to enact a proposed amendment to a previously enacted statute does not create statutory language that can be analyzed pursuant to *Allapattah*. However, if I am confirmed, I will carefully consider and evaluate any reasonable argument that such failure to amend a statute should be considered, and I will follow all Ninth Circuit and Supreme Court precedent regarding the appropriate method of statutory interpretation.

Questions for the Record for John W. Holcomb
From Senator Mazie K. Hirono

1. As part of my responsibility as a member of the Senate Judiciary Committee and to ensure the fitness of nominees, I am asking nominees to answer the following two questions:

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

      No.

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

      No.

2. Prior nominees before the Committee have spoken about the importance of training to help judges identify their implicit biases.

   a. **Do you agree that training on implicit bias is important for judges to have?**

      Yes.

   b. **Have you ever taken such training?**

      No.

   c. **If confirmed, do you commit to taking training on implicit bias?**

      Yes, if I am confirmed and if training on implicit bias is made available to district judges by the Administrative Office of the Courts (or other sanctioned judicial education provider), then I would be eager to take that training.

Nomination of John W. Holcomb
United States District Court for the Central District of California
Questions for the Record
Submitted June 24, 2020

QUESTIONS FROM SENATOR BOOKER

1. Do you consider yourself an originalist? If so, what do you understand originalism to mean?

   "Originalism" is a method of interpreting the U.S. Constitution with primary reference to the original public meaning of the constitutional provision at issue, at the time that provision was ratified. I prefer not to assume or accept any particular label, but I believe that originalism, as I understand it, is an appropriate approach to constitutional interpretation. If I am confirmed, I will fully and faithfully follow all Supreme Court and Ninth Circuit precedent, including precedent regarding the appropriate method of constitutional interpretation.

2. Do you consider yourself a textualist? If so, what do you understand textualism to mean

   "Textualism" is a method of statutory interpretation with primary reference to the original public meaning of the statutory provision at issue, at the time that statute was enacted. I prefer not to assume or accept any particular label, but I believe that textualism, as I understand it, is an appropriate approach to statutory interpretation. If I am confirmed, I will fully and faithfully follow all Supreme Court and Ninth Circuit precedent, including precedent regarding the appropriate method of statutory interpretation.

3. Legislative history refers to the record Congress produces during the process of passing a bill into law, such as detailed reports by congressional committees about a pending bill or statements by key congressional leaders while a law was being drafted. The basic idea is that by consulting these documents, a judge can get a clearer view about Congress's intent. Most federal judges are willing to consider legislative history in analyzing a statute, and the Supreme Court continues to cite legislative history.

   a. If you are confirmed to serve on the federal bench, would you be willing to consult and cite legislative history?

      In *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546 (2005), a case involving the interpretation of the supplemental jurisdiction statute, 28 U.S.C. § 1367, the Supreme Court stated, "[a]s we have repeatedly held, the authoritative statement is the statutory text, not the legislative history or any other extrinsic material. Extrinsic materials have a role in statutory interpretation only to the extent they shed a reliable light on the enacting Legislature's understanding of otherwise ambiguous terms." *Id.* at 568. If I am confirmed, I will fully and faithfully follow all Ninth Circuit and Supreme Court precedent, including *Allapattah*, concerning when and how to consult legislative history in connection with statutory interpretation.

   b. If you are confirmed to serve on the federal bench, your opinions would be subject to

review by the Supreme Court. Most Supreme Court Justices are willing to consider legislative history. Isn't it reasonable for you, as a lower-court judge, to evaluate any relevant arguments about legislative history in a case that comes before you?

If I am confirmed, I will carefully consider and evaluate all relevant arguments that the parties make in any case that comes before me, including their arguments about legislative history. I will also fully and faithfully follow all Supreme Court and Ninth Circuit precedent concerning the proper level of consultation and citation of legislative history.

4. Do you believe that judicial restraint is an important value for an appellate judge to consider in deciding a case? If so, what do you understand judicial restraint to mean?

Yes, judicial restraint is an important value for any judge to consider in deciding a case. "Judicial restraint" refers to a judge's self-limitation on the exercise of his or her judicial power.

a. The Supreme Court's decision in *District of Columbia v. Heller* dramatically changed the Court's longstanding interpretation of the Second Amendment.[1] Was that decision guided by the principle of judicial restraint?

In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court recognized an individual right to keep and bear arms. With respect, it would be inappropriate for me, as a nominee for the district court, to comment on the propriety of that decision, including whether, in reaching that decision, the Court was guided by the principle of judicial restraint.

b. The Supreme Court's decision in *Citizens United v. FEC* opened the floodgates to big money in politics.[2] Was that decision guided by the principle of judicial restraint?

In *Citizens United v. Federal Election Comm'n*, 558 U.S. 310 (2010), the Supreme Court recognized a corporation's First Amendment right to engage in political speech. With respect, it would be inappropriate for me, as a nominee for the district court, to comment on the propriety of that decision, including whether, in reaching that decision, the Court was guided by the principle of judicial restraint.

c. The Supreme Court's decision in *Shelby County v. Holder* gutted Section 5 of the Voting Rights Act.[3] Was that decision guided by the principle of judicial restraint?

In *Shelby County v. Holder*, 570 U.S. 529 (2013), the Supreme Court held that the Voting Rights Act's coverage formula and preclearance requirement was unconstitutional. With respect, it would be inappropriate for me, as a nominee for the district court, to comment on the propriety of that decision, including whether, in reaching that decision, the Court was guided by the principle of judicial restraint.

5. Since the Supreme Court's *Shelby County* decision in 2013, states across the country

[1] 554 U.S. 570 (2008).
[2] 558 U.S. 310 (2010).
[3] 570 U.S. 529 (2013).

have adopted restrictive voting laws that make it harder for people to vote. From stringent voter ID laws to voter roll purges to the elimination of early voting, these laws disproportionately disenfranchise people in poor and minority communities. These laws are often passed under the guise of addressing purported widespread voter fraud. Study after study has demonstrated, however, that widespread voter fraud is a myth.[4] In fact, in-person voter fraud is so exceptionally rare that an American is more likely to be struck by lightning than to impersonate someone at the polls.[5]

a. Do you believe that in-person voter fraud is a widespread problem in American elections?

   I have not studied the issue of in-person voter fraud. In addition, I understand that litigation is pending or impending in courts throughout the country regarding election law, including voter fraud. Accordingly, with respect, it would be inappropriate for me, as a nominee for the district court, to comment on this issue. *See* Code of Conduct for United States Judges, Canon 3(A)(6).

b. In your assessment, do restrictive voter ID laws suppress the vote in poor and minority communities?

   I have not studied the issue of the effect of restrictive voter ID laws. In addition, I understand that litigation is pending or impending in courts throughout the country regarding election law, including voter ID laws. Accordingly, with respect, it would be inappropriate for me, as a nominee for the district court, to comment on this issue. *See* Code of Conduct for United States Judges, Canon 3(A)(6).

c. Do you agree with the statement that voter ID laws are the twenty-first-century equivalent of poll taxes?

   I have not studied the issue of the effect of restrictive voter ID laws. In addition, I understand that litigation is pending or impending in courts throughout the country regarding election law, including voter ID laws. Accordingly, with respect, it would be inappropriate for me, as a nominee for the district court, to comment on this issue. *See* Code of Conduct for United States Judges, Canon 3(A)(6).

6. According to a Brookings Institution study, African Americans and whites use drugs at similar rates, yet blacks are 3.6 times more likely to be arrested for selling drugs and 2.5 times more likely to be arrested for possessing drugs than their white peers.[6] Notably, the same study found that whites are actually *more likely* than blacks to sell drugs.[7] These shocking statistics are reflected in our nation's prisons and jails. Blacks are five times more likely than whites to be incarcerated in state prisons.[8] In my home state of New

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[4] *Debunking the Voter Fraud Myth*, BRENNAN CTR. FOR JUSTICE (Jan. 31, 2017), https://www.brennancenter.org /analysis/debunking-voter-fraud-myth.
[5] *Id.*
[6] Jonathan Rothwell, *How the War on Drugs Damages Black Social Mobility*, BROOKINGS INST. (Sept. 30, 2014), https://www.brookings.edu/blog/social-mobility-memos/2014/09/30/how-the-war-on-drugs-damages-black-social-mobility.
[7] *Id.*
[8] Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, SENTENCING PROJECT (June 14,

Jersey, the disparity between blacks and whites in the state prison systems is greater than 10 to 1.[9]

a. Do you believe there is implicit racial bias in our criminal justice system?

Yes, I do believe that, unfortunately, there is implicit racial bias in our criminal justice system.

b. Do you believe people of color are disproportionately represented in our nation's jails and prisons?

Yes, I understand that people of color are disproportionately represented in our nation's jails and prisons.

c. Prior to your nomination, have you ever studied the issue of implicit racial bias in our criminal justice system? Please list what books, articles, or reports you have reviewed on this topic.

No, prior to my nomination, I had not studied the issue of implicit racial bias in our criminal justice system.

d. According to a report by the United States Sentencing Commission, black men who commit the same crimes as white men receive federal prison sentences that are an average of 19.1 percent longer.[10] Why do you think that is the case?

I have not studied the issue of racial disparity in federal prison sentencing, and I do not know why such disparity exists. The fact that such disparity exists is deeply disconcerting. If I am confirmed, I will comply with 18 U.S.C. § 3553(a)(6), which, in connection with sentencing decisions, directs district courts to consider "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct."

e. According to an academic study, black men are 75 percent more likely than similarly situated white men to be charged with federal offenses that carry harsh mandatory minimum sentences.[11] Why do you think that is the case?

I have not studied the issue of racial disparity in federal criminal charging decisions, and I do not know why such disparity exists. The fact that such disparity exists is deeply disconcerting. If I am confirmed, I will comply with 18 U.S.C. § 3553(a)(6), which, in connection with sentencing decisions, directs district courts to consider "the need to avoid unwarranted sentence disparities among defendants

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2016), http://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons.

[9] *Id.*

[10] U.S. SENTENCING COMM'N, DEMOGRAPHIC DIFFERENCES IN SENTENCING: AN UPDATE TO THE 2012 *BOOKER* REPORT 2 (Nov. 2017), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171114_Demographics.pdf.

[11] Sonja B. Starr & M. Marit Rehavi, *Racial Disparity in Federal Criminal Sentences*, 122 J. POL. ECON. 1320, 1323 (2014)

with similar records who have been found guilty of similar conduct."

f. What role do you think federal appeals judges, who review difficult, complex criminal cases, can play in addressing implicit racial bias in our criminal justice system?

Federal appellate judges, as well as district judges, can address implicit racial bias in our criminal justice system by ensuring their compliance with 18 U.S.C. § 3553(a)(6), which, in connection with sentencing decisions, directs courts to consider "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." Judges can also address that bias by "impos[ing] a sentence sufficient, but not greater than necessary," 18 U.S.C. § 3553(a), to address the facts and circumstances pertaining to the individual defendant before the court. Additionally, judges should endeavor to recognize and address implicit racial bias in individuals they encounter in the criminal justice system, including prosecutors, prospective jurors, and law clerks.

7. According to a Pew Charitable Trusts fact sheet, in the 10 states with the largest declines in their incarceration rates, crime fell by an average of 14.4 percent.[12] In the 10 states that saw the largest increase in their incarceration rates, crime decreased by an average of 8.1 percent.[13]

   a. Do you believe there is a direct link between increases in a state's incarcerated population and decreased crime rates in that state? If you believe there is a direct link, please explain your views.

   I have not studied the issue of the relationship between incarceration rates and crime rates. Accordingly, I do not have a belief regarding whether there is a direct link between those rates.

   b. Do you believe there is a direct link between decreases in a state's incarcerated population and decreased crime rates in that state? If you do not believe there is a direct link, please explain your views.

   Please see my response to Question 7(a) above.

8. Do you believe it is an important goal for there to be demographic diversity in the judicial branch? If not, please explain your views.

   Yes.

9. Would you honor the request of a plaintiff, defendant, or witness in a case before you who is transgender to be referred to in accordance with that person's gender identity?

[12] Fact Sheet, *National Imprisonment and Crime Rates Continue To Fall*, PEW CHARITABLE TRUSTS (Dec. 29, 2016), http://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2016/12/national-imprisonment-and-crime-rates-continue-to-fall.

[13] *Id.*

Yes.

10. Do you believe that *Brown v. Board of Education*[14] was correctly decided? If you cannot give a direct answer, please explain why and provide at least one supportive citation.

    Yes.

11. Do you believe that *Plessy v. Ferguson*[15] was correctly decided? If you cannot give a direct answer, please explain why and provide at least one supportive citation.

    No.

12. Has any official from the White House or the Department of Justice, or anyone else involved in your nomination or confirmation process, instructed or suggested that you not opine on whether any past Supreme Court decisions were correctly decided?

    No.

13. As a candidate in 2016, President Trump said that U.S. District Judge Gonzalo Curiel, who was born in Indiana to parents who had immigrated from Mexico, had "an absolute conflict" in presiding over civil fraud lawsuits against Trump University because he was "of Mexican heritage."[16] Do you agree with President Trump's view that a judge's race or ethnicity can be a basis for recusal or disqualification?

    The issues of recusal and disqualification of district judges are governed by statutes including 28 U.S.C. §§ 144 and 455. With respect, it would be inappropriate for me, as a nominee for the district court, to comment on the propriety of Judge Curiel's decision whether to recuse himself in the civil fraud lawsuits against Trump University. If I am confirmed, in connection with recusal and disqualifications issues I will follow 28 U.S.C. §§ 144 and 455, as well as the Code of Conduct for United States Judges.

14. President Trump has stated on Twitter: "We cannot allow all of these people to invade our Country. When somebody comes in, we must immediately, with no Judges or Court Cases, bring them back from where they came."[17] Do you believe that immigrants, regardless of status, are entitled to due process and fair adjudication of their claims?

    In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court ruled that "once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Id.* at 693. If I am confirmed, I will fully and faithfully follow all Supreme Court precedent, including *Zadvydas*.

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[14] 347 U.S. 483 (1954).
[15] 163 U.S. 537 (1896).
[16] Brent Kendall, *Trump Says Judge's Mexican Heritage Presents 'Absolute Conflict,'* WALL ST. J. (June 3, 2016), https://www.wsj.com/articles/donald-trump-keeps-up-attacks-on-judge-gonzalo-curiel-1464911442.
[17] Donald J. Trump (@realDonaldTrump), TWITTER (June 24, 2018, 8:02 A.M.), https://twitter.com/realDonaldTrump/status/1010900865602019329.

Questions for the Record for John W. Holcomb
From Senator Mazie K. Hirono

1. As part of my responsibility as a member of the Senate Judiciary Committee and to ensure the fitness of nominees, I am asking nominees to answer the following two questions:

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

      No.

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

      No.

2. Prior nominees before the Committee have spoken about the importance of training to help judges identify their implicit biases.

   a. **Do you agree that training on implicit bias is important for judges to have?**

      Yes.

   b. **Have you ever taken such training?**

      No.

   c. **If confirmed, do you commit to taking training on implicit bias?**

      Yes, if I am confirmed and if training on implicit bias is made available to district judges by the Administrative Office of the Courts (or other sanctioned judicial education provider), then I would be eager to take that training.

Senator Josh Hawley
Questions for the Record

John W. Holcomb
Nominee, U.S. District Court for the Central District of California

1. **In *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), the Supreme Court set out the precedent of judicial deference that federal courts must afford to administrative actions.**

    a. **Please explain your understanding of the Supreme Court's holding in *Chevron.***

    In *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), the Supreme Court held that courts generally should defer to a governmental agency's interpretation of a statute if the agency's interpretation is based on a permissible construction of that statute and Congress has not spoken directly to the precise issue in question. In a closely related case, *Auer v. Robbins*, 519 U.S. 452 (1997), the Supreme Court held that courts should generally defer to a governmental agency's reasonable reading of its own regulation. In *Kisor v. Wilkie*, 139 S. Ct. 2400 (2019), the Supreme Court affirmed *Auer* in circumstances where the regulation at issue is genuinely ambiguous and the agency's interpretation of that regulation is reasonable. If I am confirmed, I will follow all Ninth Circuit and Supreme Court precedent, including *Chevron*, *Auer*, and *Kisor*.

    b. **Please describe how you would determine whether a statute enacted by Congress is ambiguous.**

    It would be inappropriate for me, as a nominee for the district court, to suggest how (if I am confirmed) I might rule in any future case. *See* Code of Conduct for United States Judges, Canon 3(A)(6). However, the Supreme Court's recent decision in *Kisor v. Wilkie*, 139 S. Ct. 2400 (2019), could provide some guidance. That case involved determining the ambiguity of an agency regulation, not a statute. In *Kisor*, the Supreme Court held that "a court must exhaust all the 'traditional tools' of construction" before concluding that a rule is ambiguous. *Id.* at 2415 (quoting *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843 n.9 (1984)). The Supreme Court continued to explain that even if reading the regulation makes "the eyes glaze over," a court should not "wave the ambiguity flag"; the court must always thoroughly analyze the regulation. *Kisor*, 139 S. Ct. at 2415. If I am confirmed, I will follow all Ninth Circuit and Supreme Court precedent, including *Chevron* and *Kisor*, regarding the appropriate method of statutory interpretation.

c. **In your view, is it relevant to the *Chevron* analysis whether the agency that took the regulatory action in question recognized that the statute is ambiguous?**

   Please see my response to Question 1(b) above.

2. **What is your view of the scope of the First Amendment's right to free exercise of religion?**

   Please see my responses to Questions 2(a)-(d) below.

   a. **Is the right to free exercise of religion synonymous and coextensive with freedom of worship? If not, what else does it include?**

      It would be inappropriate for me, as a nominee for the district court, to suggest how (if I am confirmed) I might rule in any future case. *See* Code of Conduct for United States Judges, Canon 3(A)(6). However, the Supreme Court's decision in *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993), could provide some guidance to the question posed. The Lukumi church and its congregants practice the Santeria religion, which employs animal sacrifice as one of its principal forms of devotion. The Supreme Court ruled that a city ordinance forbidding the so-called unnecessary killing of "an animal in a public or private ritual or ceremony not for the primary purpose of food consumption," was unconstitutional. The Court stated, "[a]t a minimum, the protections of the Free Exercise Clause pertain if the law at issue discriminates against some or all religious beliefs or regulates or prohibits conduct because it is undertaken for religious reasons." *Id.* at 532. Likewise, in *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017), the Supreme Court found that a Missouri program that denied a grant to a religious school for playground resurfacing, while providing grants to similarly situated non-religious groups, violated the church's freedom of religion guaranteed by the Free Exercise Clause of the First Amendment. In reaching that decision, the Court ruled, "[t]he State in this case expressly requires Trinity Lutheran to renounce its religious character in order to participate in an otherwise generally available public benefit program, for which it is fully qualified. Our cases make clear that such a condition imposes a penalty on the free exercise of religion that must be subjected to the 'most rigorous' scrutiny." *Id.* at 2024 (quoting *Lukumi*, 508 U.S. at 546). Thus, "freedom of religion" protected by the Free Exercise Clause of the First Amendment is broader than merely the right to "freedom of worship." If I am confirmed, I will carefully consider and evaluate any reasonable argument regarding the distinction between "freedom of worship" and "freedom of religion," and I will follow all Ninth Circuit and Supreme Court precedent, including *Lukumi* and *Trinity Lutheran*, regarding the interpretation of the Free Exercise Clause of the First Amendment.

b. **What standard would you apply when determining whether a governmental action is a substantial burden on the free exercise of religion?**

It would be inappropriate for me, as a nominee for the district court, to suggest how (if I am confirmed) I might rule in any future case. *See* Code of Conduct for United States Judges, Canon 3(A)(6). However, the Supreme Court's decision a few years ago in *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017), could provide some guidance. In that case, the Supreme Court found that a Missouri program that denied a grant to a religious school for playground resurfacing, while providing grants to similarly situated non-religious groups, violated the church's freedom of religion guaranteed by the Free Exercise Clause of the First Amendment. In reaching this decision, the Court ruled, "[t]he State in this case expressly requires Trinity Lutheran to renounce its religious character in order to participate in an otherwise generally available public benefit program, for which it is fully qualified. Our cases make clear that such a condition imposes a penalty on the free exercise of religion that must be subjected to the 'most rigorous' scrutiny." *Id.* at 2024 (quoting *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993)). The Court continued to explain that "[u]nder that stringent standard, only a state interest 'of the highest order' can justify the Department's discriminatory policy." *Trinity Lutheran*, 137 S. Ct. at 2024 (quoting *McDaniel v. Paty*, 435 U.S. 618, 628 (1978) (internal quotation marks omitted)). If I am confirmed, I will carefully consider and evaluate any reasonable argument regarding the applicable standard for determining whether a governmental action is a substantial burden on the free exercise of religion, and I will follow all Ninth Circuit and Supreme Court precedent, including *Trinity Lutheran*, *Lukumi*, and *McDaniel*, regarding the interpretation and application of the Free Exercise Clause of the First Amendment.

c. **Under what circumstances and using what standard is it appropriate for a federal court to question the sincerity of a religiously held belief?**

It would be inappropriate for me, as a nominee for the district court, to suggest how (if I am confirmed) I might rule in any future case. *See* Code of Conduct for United States Judges, Canon 3(A)(6). However, the Supreme Court's decision in *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014), could provide some guidance on the issue of the standard to apply to evaluate the sincerity of a religiously held belief. In that case, the Supreme Court determined that the Religious Freedom Restoration Act of 1993, which protects a person's exercise of religion from infringement by the federal government, applies to for-profit corporations. The Court also commented that "[t]o qualify for RFRA's protection, an asserted belief must be 'sincere'; a corporation's pretextual assertion of a religious belief in order to obtain an exemption for financial reasons would fail." *Id.* at 717 n.28. If I am confirmed, I will carefully consider and evaluate any reasonable argument regarding the applicable standard to apply to

evaluate the sincerity of a religiously held belief, and I will follow all Ninth Circuit and Supreme Court precedent, including *Hobby Lobby*, regarding the interpretation and application of the Free Exercise Clause of the First Amendment.

d. **Describe your understanding of the relationship between the Religious Freedom Restoration Act and other federal laws, such as those governing areas like employment and education?**

The Religious Freedom Restoration Act of 1993 provides that its terms apply generally "to all Federal law, and the implementation of that law, whether statutory or otherwise, and whether adopted before or after November 16, 1993." 42 U.S.C. § 2000bb-3(a). RFRA also supplies this rule of construction: "Federal statutory law adopted after November 16, 1993, is subject to [RFRA] unless such law explicitly excludes such application by reference to [RFRA]." 42 U.S.C. § 2000bb-3(b).

3. **What is your understanding of the Supreme Court's holding in *District of Columbia v. Heller?***

In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court recognized an individual right to keep and bear arms under the Second Amendment.

4. **Under what circumstances do you believe it is appropriate for a federal district judge to issue a nationwide injunction against the implementation of a federal law, administrative agency decision, executive order, or similar federal policy?**

I understand that litigation is pending or impending in courts throughout the country regarding the propriety of nationwide injunctions. Accordingly, with respect, it would be inappropriate for me, as a nominee for the district court, to comment on this issue. *See* Code of Conduct for United States Judges, Canon 3(A)(6).

5. **Please state whether you agree or disagree with the following statement and explain why: "Absent binding precedent, judges should interpret statutes based on the meaning of the statutory text, which is that which an ordinary speaker of English would have understood the words to mean, in their context, at the time they were enacted."**

The quoted statement describes a textualist approach to statutory interpretation, which I believe is appropriate, absent binding precedent to the contrary. In *Advocate Health Care Network v. Stapleton*, 137 S. Ct. 1652 (2019), a case involving the interpretation of an ERISA provision, the Supreme Court noted that in undertaking its analysis it would "[s]tart, as we always do, with the statutory language . . . ." *Id.* at 1658.

6. **Dissenting in *Lochner v. New York*, Justice Oliver Wendell Holmes Jr. wrote that "[t]he Fourteenth Amendment does not enact Mr. Herbert Spencer's Social Statics."**

    a. **What do you believe Justice Holmes meant by that statement, and do you agree with it?**

        With respect, it would be inappropriate for me, as a nominee for the district court, to comment on the propriety of the Supreme Court's decision in *Lochner v. New York*, 198 U.S. 45 (1905), including the statements that Justice Holmes made in his dissent.

    b. **Do you believe that *Lochner v. New York*, 198 U.S. 45 (1905), was correctly decided? Why or why not?**

        Please see my response to Question 6(b) above. In addition, *Lochner* has been effectively overturned by the Supreme Court. If I am confirmed, I will follow all Supreme Court and Ninth Circuit precedent.