Senator Chuck Grassley, Ranking Member
Questions for the Record
Judge John Hyungseung Chun
Judicial Nominee to the United States District Court for the
Western District of Washington

1. **While you were a trustee for the King County Bar Association in 2013, the KCBA proposed changes to the Washington Bar's rules of misconduct. You identified this proposed rule change as a document that you prepared or helped prepare in response to the Senate Judiciary Questionnaire.**

   The KCBA's proposed New Rule 8.6 stated:

   > **Notwithstanding any other provision of these rules, a lawyer shall not be in violation of these rules or subject to discipline *for engaging in conduct, or for counseling or assisting a client to engage in conduct, that* by virtue of a specific provision of Washington state law and implementing regulations is either (a) permitted, or (b) within an affirmative defense to prosecution under state criminal law, solely because that same conduct, standing alone, *may violate federal law*.**[1]

   The proposed rule does not refer to any specific state law. It says that lawyers do not violate the rule if "by virtue of a specific provision of Washington state law" the conduct they engage in—or the conduct they assist clients with engaging in—is "either (a) permitted, or (b) within an affirmative defense." The comments to the proposed rule asserted that the rule addressed Washington State Initiative Measure No. 502, which concerned the legality of marijuana under state law.

   Washington State Bar Association (WSBA) Chief Disciplinary Counsel Douglas Ende wrote a letter responding to the KCBA's recommended amendments. He wrote in part:

   > **The first solemn declaration of Washington's Oath of Attorney is this: "I am fully subject to the laws of the State of Washington and the laws of the United States and will abide by the same." Admission to Practice Rule 5(e). The King County Bar Association's (KCBA) suggested amendments to the Rules of Professional Conduct would change our rules of ethics to provide that in certain circumstances, a lawyer may knowingly violate federal law or assist a client in doing so. This represents a significant change to Washington's Rules of Professional Conduct.**

[1] Chun SJQ Attachments at 44 (emphasis added).

. . .

It leads to the dissonance of the Oath of Attorney saying one thing and the RPC saying another. And a simple safe harbor is not a good substitute for the profession's traditional means of resolving difficult ethical problems, i.e., a lawyer's thoughtful analysis of the competing interests at stake followed by an informed exercise of professional judgment.[2]

I am concerned that you contributed to a bar-association proposal that created a safe harbor for cases where a lawyer "solely" violated federal law—and cases where a lawyer "solely" helped clients to violate federal law. A number of states, including Washington State, have passed legislation to become "sanctuary states."[3] My questions for you are:

a. Did you support this proposed rule change?

Response: Out of an abundance of caution, I included the King County Bar Association (KCBA) letter and attachments at issue, which were discovered as a result of an online search. Given that I was a Trustee of the KCBA at the time the letter was submitted, I felt that it arguably fell within the scope of question 12.b of the Senate Judiciary Questionnaire. I recall that, in response to Washington Initiative 502 (which was approved by popular vote in November 2012), which deals with marijuana legalization, the KCBA Board of Trustees was attempting to address potential ethics issues that might arise for Washington attorneys representing clients in connection with marijuana-related businesses. But to the best of my recollection, I played no direct role in preparing the letter or the attachments. Nor was I involved in any committee, task force, or other group tasked with the project. I have no record or recollection regarding whether I supported the proposal set forth in these documents.

b. If you did, why did you think it should be appropriate for an attorney to violate federal law?

Response: Please see my response to No. 1.a above.

c. If you did, why did you think it was acceptable for an attorney to help clients violate federal law?

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[2] Letter from Douglas J. Ende, Chief Disciplinary Counsel, Washington State Bar Association, to Justice Charles W. Johnson, Chair, Washington Supreme Court Rules Committee (Oct. 24, 2013), http://www.kcba.org/kcba/judicial/legislative/pdf/ende_102413.pdf.

[3] *See, e.g.*, Tom James, *Washington Gov. Jay Inslee signs sanctuary state law*, May 22, 2019, https://www.king5.com/article/news/politics/washington-gov-jay-inslee-signs-sanctuary-state-law/281-e4fc124a-82dc-4c9e-bedc-9c179ae9bb7e.

Response: Please see my response to No. 1.a above.

d. Under this proposal, would attorneys be permitted to advise clients on how to violate federal immigration law in sanctuary states like Washington State?

Response: To the best of my recollection, the KCBA Board of Trustees did not address any potential interplay between the proposal and federal immigration law.

e. Under this proposal, would attorneys be permitted to advise clients on how to violate federal prohibitions on shipping or transporting firearms in interstate or foreign commerce when the client falls within one of the categories set out in 18 U.S.C. 922(g), if a state law does not specifically prohibit it?

Response: I do not believe so. As I read the proposal, it concerns situations where Washington law actually permits the client conduct at issue.

f. Conversely, can a state ignore Second Amendment rights? Under this proposal, can an attorney counsel a state on how to take away someone's private firearms under the language of Rule 8.6, even if that firearm ownership is federally protected by the Second Amendment?

Response: No, a state cannot ignore Second Amendment rights. The Second Amendment applies to state conduct under *McDonald v. City of Chicago*, 561 U.S. 742 (2010). I would also note that article 1, section 24 of the Washington Constitution protects the right to bear arms. As I read the proposal, it concerns situations where Washington law actually permits conduct that would violate federal law, so it would not raise a Second Amendment concern.

2. In the context of federal case law, what is super precedent? Which cases, if any, count as super precedent?

Response: I do not believe that United States Supreme Court or the Ninth Circuit uses the term "super precedent" to label a category of precedent. It is not a term that I have used in my legal work. If confirmed, as I have done as a state court judge, I will faithfully apply all binding precedent.

3. You can answer the following questions yes or no:

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

Response: Yes. As a sitting state appellate court judge and a federal judicial nominee, generally, I believe it would be inappropriate for me to offer comments about the legitimacy of any United States Supreme Court decision because I am

bound to apply such precedent regardless of any views I may hold. However, because I am aware prior judicial nominees have offered an opinion on this decision and its holding is unlikely to ever be challenged, I feel comfortable in stating that I believe *Brown v. Board of Education* was correctly decided.

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

Response: Yes. As a sitting state appellate court judge and a federal judicial nominee, generally, I believe it would be inappropriate for me to offer comments about the legitimacy of any United States Supreme Court decision because I am bound to apply such precedent regardless of any views I may hold. However, because I am aware prior judicial nominees have offered an opinion on this decision and its holding is unlikely to ever be challenged, I feel comfortable in stating that I believe *Loving v. Virginia* was correctly decided.

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

Response: As a sitting state appellate court judge and a federal judicial nominee, generally, I believe it would be inappropriate for me to offer comments about the legitimacy of any United States Supreme Court decision because I am bound to apply such precedent regardless of any views I may hold.

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

Response: Please see my response to No. 3.c above.

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

Response: Please see my response to No. 3.c above.

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

Response: Please see my response to No. 3.c above.

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

Response: Please see my response to No. 3.c above.

h. Was *Sturgeon v. Frost* correctly decided?

Response: Please see my response to No. 3.c above.

i. Was *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission* correctly decided?

Response: Please see my response to No. 3.c above.

4. Do you agree with Judge Ketanji Brown Jackson when she said in 2013 that she did not believe in a "living constitution"?

I am unfamiliar with any such comment by Judge Jackson or its context. Nor do I believe in any doctrine of a "living" Constitution. I believe the Constitution is an enduring document fundamental for our system of government. If confirmed, as I have done as a state court judge, I will faithfully interpret the Constitution as directed by binding precedent.

5. Should judicial decisions take into consideration principles of social "equity"?

Response: No. A judge is bound by oath to decide cases based on the facts and the applicable law only, without taking into consideration broader questions of social equity.

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

Response: I am unaware of this quote or its context. In resolving constitutional issues, federal judges should be guided by the methods of interpretation called upon by binding precedent. A judge's personal values should not interfere with this exercise. If confirmed, as I have done as a state court judge, I will faithfully follow such precedent.

7. Is whether a specific substance causes cancer in humans a scientific question?

Response: I understand that federal courts have considered testimony by scientific experts as relevant to the question of whether a specific substance causes cancer in humans. *See, e.g.*, *General Electric Co. v. Joiner*, 522 U.S. 136 (1997) (involving expert testimony regarding whether there was a link between exposure to PCBs and small cell cancer).

8. Is when a "fetus is viable" a scientific question?

Response: In *Planned Parenthood v. Casey*, 505 U.S. 833, 860 (1992), the United States Supreme Court said, "[A]dvances in neonatal care have advanced viability to a point somewhat earlier" than in 1973, the time of *Roe v. Wade*. It noted that viability occurred at approximately 28 weeks in 1973, occurred at approximately 23 to 24 weeks at the time of *Casey*, and may occur "at some moment even slightly earlier in pregnancy, as it may if

fetal respiratory capacity can somehow be enhanced in the future." *Id*.

9. Is when a human life begins a scientific question?

Response: In *Planned Parenthood v. Casey*, 505 U.S. 833, 851 (1992), the United States Supreme Court stated, "At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life."

10. Can someone change his or her biological sex?

Response: I understand, as a factual matter, that sex-reassignment surgery is a medical procedure that exists.

11. What is implicit bias?

Response: I understand that social scientists posit that individuals may unconsciously attribute particular characteristics to an individual or a group of individuals based on assumptions or stereotypes. They call this implicit bias. As a sitting judge, my role is to fully, faithfully, and impartially discharge my duties without any form of bias. I keep an open mind, carefully read, listen to, and make sure I understand the arguments of the parties, study the record carefully, and analyze and apply the law based on the facts in the record.

12. Is the federal judiciary affected by implicit bias?

Response: I am unaware of any study regarding implicit bias and the federal judiciary specifically. But I do understand that a number of experts believe that every person has implicit biases. *See, e.g.*, Karen Steinhauser, *Everyone Is a Little Bit Biased*, BUS. L. TODAY (Mar. 16, 2020), https://www.americanbar.org/groups/business_law/publications/blt/2020/04/everyone-is-biased/. It is important that judges treat all who come before them impartially and fairly.

13. Do you believe that "[t]here is no such thing as a non-racist or race-neutral policy"?

Response: I am unaware of this quote or its context. Taking this language at face value, I do not agree with it.

14. Under existing Supreme Court and Ninth Circuit precedent, what are the legal contours of the president's ability to remove executive-branch employees?

Response: The legal contours of the President's authority to remove executive-branch employees are defined by the Constitution, United States Supreme Court precedent, and applicable federal law. Under current law, there are two exceptions to the President's unrestricted removal power. *See Free Enterprise Fund v. Public Co. Accounting Oversight Bd.*, 561 U.S. 477 (2010); *Seila Law LLC v. Consumer Financial Protection*

Bureau, 140 S. Ct. 2183 (2020). First, Congress may "create expert agencies led by a group of principal officers removable by the President only for good cause." *Seila Law LLC*, 140 S. Ct. at 2192 (citing *Humphrey's Executor v. United States*, 295 U.S. 602 (1935)). Second, Congress may "provide tenure protections to certain inferior officers with narrowly defined duties." *Id.* (citing *Morrison v. Olson*, 487 U.S. 654 (1988)). The analysis involves consideration of the statutory provisions relating to the employee's powers and responsibilities and the President's power to remove the employee. *Id.* The Ninth Circuit recently echoed the Supreme Court's standards in *Decker Coal Company v. Pehringer*, 8 F.4th 1123 (9th Cir. 2021). If a case involving the President's removal power came before me, I would faithfully apply the applicable law to the specific facts of the case.

15. Under existing Supreme Court and Ninth Circuit precedent, when does qualified immunity not apply to a law enforcement officer in Washington State?

Response: "[O]fficers are entitled to qualified immunity under [42 U.S.C.] § 1983 unless (1) they violated a federal statutory or constitutional right, and (2) the unlawfulness of their conduct was 'clearly established at the time.'" *Dist. of Columbia v. Wesby*, 138 S. Ct. 577, 589 (2018) (quoting *Reichle v. Howards*, 566 U.S. 658, 664 (2012)). To be "clearly established," the law must be "'sufficiently clear' that every 'reasonable official would understand that what he is doing'" is unlawful. *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011) (quoting *Anderson v. Creighton*, 483 U.S. 635, 640 (1987)). The Ninth Circuit echoed the Supreme Court's standards in *Foster v. City of Indio*, 908 F.3d 1204, 1210-11 (9th Cir. 2019). If a case involving qualified immunity came before me, I would faithfully apply the applicable law to the specific facts of the case.

16. What is the legal basis for a court issuing a nationwide injunction and how has the Ninth Circuit justified such an injunction as consistent with the limitations of Article III of the Constitution?

Response: Federal Rule of Civil Procedure 65 provides for injunctions as an equitable remedy. A plaintiff seeking a preliminary injunction must establish (1) a likelihood of success on the merits, (2) a likelihood of irreparable harm in the absence of preliminary relief, (3) that the equities tip in the plaintiff's favor, and (4) that an injunction is in the public interest. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 668 (9th Cir. 2021). When the government is a party, the equities and public interest factors merge. *Id.* (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009). With regard to the scope of an injunction, the relief provided should be "no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs before the court . . . Where relief can be structured on an individual basis, it must be narrowly tailored to remedy the specific harm shown, but there is no general requirement that an injunction affect only the parties in the suit." *E. Bay Sanctuary Covenant*, 993 F.3d at 680 (internal quotations marks and citations omitted). Regarding nationwide injunctions, the Ninth Circuit has held that such broad relief may be granted only when necessary to give the plaintiff complete relief. *City & County of*

San Francisco v. Barr, 965 F.3d 753 (9th Cir. 2020). In overturning a nationwide injunction issued by the lower court, the Ninth Circuit clarified that the appropriate inquiry would be whether the plaintiffs there would continue to suffer their alleged injuries even if the injunction were limited just to California. *Id.* If confirmed and presented with a request for such injunctive relief, I will evaluate the facts of the particular case; consider the claims, issues, and arguments presented by the parties; and apply this precedent as well as any other applicable Supreme Court or Ninth Circuit rulings with regard to nationwide injunctions.

17. Is a social worker qualified to respond to a domestic violence call where there is an allegation that the aggressor is armed?

Response: The question relates to matters of ongoing public debate ultimately reserved for policymakers. As a sitting state appellate court judge and a federal judicial nominee, I believe that it would be inappropriate for me to express opinions regarding such matters, as I seek to avoid the appearance that I have prejudged any issue that might come before me. If confirmed, as I have done as a state court judge, I will faithfully apply all binding precedent regardless of any personal opinion I may have on the matter.

18. Is it appropriate for the government to use law enforcement to enforce social distancing mandates and gathering limitations for individuals attempting to practice their religion in a church, synagogue, mosque or any other place of religious worship?

Response: Issues related to COVID-19 restrictions remain a matter of ongoing public debate and have been the subject of numerous recent legal proceedings. As a sitting state appellate court judge and a federal judicial nominee, it would be improper for me to address this topic, as related issues may come before me. If faced with a case involving such a social distancing mandate, I would faithfully apply binding precedent regardless of any personal opinion I may have on the matter.

19. Do you believe that we should defund or decrease funding for police departments and law enforcement? Please explain.

Response: There is an ongoing public debate about how to best allocate public safety resources in seeking to balance the need to protect the public from criminal activity while preserving the legal rights of citizens who encounter the police in that process. This is a matter reserved for policymakers. As a sitting state appellate court judge and a federal judicial nominee, I believe in would be inappropriate for me to comment on this policy question. If confirmed, as I have done as a state court judge, I will faithfully apply binding precedent without regard to my personal views on any matter.

20. Do you believe that local governments should reallocate funds away from police departments to other support services? Please explain.

Response: There is an ongoing public debate about how to best allocate public safety resources in seeking to balance the need to protect the public from criminal activity while preserving the legal rights of citizens who encounter the police in that process. This is a matter reserved for policymakers. As a sitting state appellate court judge and a federal judicial nominee, I believe in would be inappropriate for me to comment on this policy question. If confirmed, as I have done as a state court judge, I will faithfully apply binding precedent without regard to my personal views on any matter.

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

Response: In *Dist. of Columbia v. Heller*, 554 U.S. 570 (2008) and *McDonald v. City of Chicago*, 561 U.S. 742 (2010), the United States Supreme Court held that the right to bear arms is an individual right and that it applies to the states. Currently, the Ninth Circuit analyzes challenges to restrictions on Second Amendment rights as follows: First, the court asks "if the challenged law affects conduct that is protected by the Second Amendment," basing "that determination on the historical understanding of the scope of the right." *Young v. Hawaii*, 992 F.3d 765, 783 (9th Cir. 2021). Second, if the court finds that the challenged restriction burdens such conduct, it must then determine the appropriate level of scrutiny. *Id.* at 784. If a regulation amounts to a destruction of the Second Amendment right, then it is unconstitutional. *Id.* If the law severely burdens that right, strict scrutiny applies. *Id.* Where the Second Amendment rights are less affected, intermediate scrutiny applies. *Id.* If confirmed, as I have done as a state court judge, I will faithfully follow all binding precedent.

22. Under existing Ninth Circuit precedent, do state school-choice programs make private schools state actors for the purposes of the Americans with Disabilities Act?

Response: I am unaware of any Ninth Circuit precedent that would determine the answer to this question. Also, as a sitting state appellate court judge and a federal judicial nominee, I believe that it would be inappropriate for me to express an opinion without specific facts before me, and I seek to avoid the appearance that I have prejudged any issue that might come before me. If confirmed, as I have done as a state court judge, I will faithfully apply all binding precedent.

23. Do you agree with Thomas Jefferson that the First Amendment erects "a wall of separation between Church & State"?

Response: I agree that the First Amendment states, in part, "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof." Questions about the extent to which government and religion may appropriately intersect are fact dependent and, if confirmed, as I have done as a state court judge, I will apply binding precedent to any case presenting such a question.

24. Under existing Supreme Court and Ninth Circuit precedent, does a law restrict abortion access if it requires doctors to provide medical care to children born alive following failed abortions?

Response: I am unaware of any such precedent that would determine the answer to this question. Also, as a sitting state appellate court judge and a federal judicial nominee, I believe that it would be inappropriate for me to express an opinion without specific facts before me, as I seek to avoid the appearance that I have prejudged any issue that might come before me. I am aware of the Born-Alive Infants Protection Act of 2002, as well as the United States Supreme Court's decision in *Planned Parenthood of SE Pennsylvania v. Casey*, 505 U.S. 833 (1992), and later cases. If confirmed, as I have done as a state court judge, I will faithfully apply all binding precedent.

25. Under the Religious Freedom Restoration Act the federal government cannot "substantially burden a person's exercise of religion."

a. Under current Supreme Court and Ninth Circuit precedent, who decides whether a burden exists on the exercise of religion, the government or the religious adherent?

Response: The court determines whether a law substantially burdens the free exercise of religion. *Burwell v. Hobby Lobby*, 573 U.S. 682 (2014). However, federal courts "have no business addressing" whether a religious belief is reasonable. *Id.* at 724.

b. How is a burden deemed to be "substantial[]" under current case law?

Response: In *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014), the United States Supreme Court applied a two-part analysis to determine that there was a substantial burden on the plaintiffs in violation of the Religious Freedom Restoration Act. First, non-compliance with the challenged law would impose "severe" economic costs. *Id.* at 720. Second, compliance would force the plaintiffs to violate their sincere religious beliefs. *Id.* at 720-26.

26. Judge Stephen Reinhardt once explained that, because the Supreme Court hears a limited number of cases each year, part of his judicial mantra was, "They can't catch 'em all." Is this an appropriate approach for a federal judge to take?

Response: I am unfamiliar with this quote or its context. If confirmed, as I have done as a state court judge, I will faithfully apply binding precedent, striving to render decisions consistent with that precedent rather than at odds with it.

27. Do you believe that "[t]here is no such thing as a non-racist or race-neutral policy"?

Response: Please see my response to No. 13 above.

28. What is the operative standard for determining whether a statement is not protected speech under the "fighting words" doctrine?

Response: Under *Chaplinsky v. New Hampshire*, 315 U.S. 568, 572 (1942), "fighting words" fall under the category of words "which by their very utterance inflict injury or tend to incite an immediate breach of the peace." They are "those personally abusive epithets which, when addressed to the ordinary citizen, are, as a matter of common knowledge, inherently likely to provoke a violent reaction." *Cohen v. California*, 403 U.S. 15, 20 (1971); *accord Virginia v. Black*, 538 U.S. 343, 359 (2003). Symbolic speech does not constitute fighting words and the words themselves must contain "a direct personal insult or an invitation to exchange fisticuffs." *Texas v. Johnson*, 491 U.S. 397, 409 (1989).

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

Response: The First Amendment "permits a State to ban a true threat." *Virginia v. Black*, 538 U.S. 343, 359 (2003) (internal quotation marks omitted). "True threats encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals." *Id.* (internal quotation marks omitted).

30. 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 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, Katie O'Connor, Jen Dansereau, Faiz Shakir, and/or Stasha Rhodes?

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, Katie O'Connor, Jen Dansereau, Faiz Shakir, and/or Stasha Rhodes?

Response: No.

31. **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 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 and/or Daniel L. Goldberg?**

    Response: No.

    c. **Have you ever been in contact with anyone associated with Demand Justice, including, but not limited to: Rakim Brooks and/or Daniel L. Goldberg?**

    Response: No.

32. **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.

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

    Response: I do not know any such person.

    c. **Are you currently in contact with anyone associated with Arabella Advisors? Please include in this answer anyone associated with Arabella's known**

subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.

Response: No.

d. Have you ever been in contact with anyone associated with Arabella Advisors? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.

Response: No.

33. 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?

Response: No.

c. Have you ever been in contact with anyone associated with the Open Society Foundations?

Response: No.

34. 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, Tyler Cooper, Dylan Hosmer-Quint and/or Mackenzie Long?

Response: No.

c. Have you ever been in contact with anyone associated with Fix the Court, including but not limited to: Gabe Roth, Tyler Cooper, Dylan Hosmer-Quint and/or Mackenzie Long?

Response: No.

35. 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 January 3, 2021, I submitted an application to the bipartisan Judicial Merit Selection Committee created by Senators Patty Murray and Maria Cantwell, in response to their call for applications for a position on the United States District Court for the Western District of Washington. On February 9, 2021, I interviewed with that Committee. On February 24, 2021, I interviewed with staff from Senator Murray's office. On March 2, 2021, I interviewed with staff from Senator Cantwell's office. On March 8, 2021, I interview with Senator Murray. Thereafter, Senator Murray's staff informed me that my name was being submitted to the White House for further consideration. On July 2, 2021, I interviewed with attorneys from the White House Counsel's Office. Since July 7, 2021, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On September 30, 2021, my nomination was submitted to the Senate.

36. 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.

37. 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: Earlier this year, I attended a webinar regarding the federal judicial nomination process. I believe the American Constitution Society was one of the hosts. I did not have any discussions with the organization.

38. 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, or any other such Arabella dark-money fund that is still shrouded.

Response: No.

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

Response: No.

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

Response: Please see my response to No. 35 above. In addition, since my nomination on September 30, I have been in regular contact with the Office of Legal Policy at the Department of Justice regarding finalizing my responses to the Senate Judiciary Questionnaire, preparing for my appearance before the Senate Judiciary Committee, and responding to Questions for the Record. Also, after my nomination, I was in regular contact with White House staff regarding preparing for my appearance before the Senate Judiciary Committee.

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

Response: I received these questions on November 24, 2021. I prepared draft answers, which I submitted to the Office of Legal Policy for feedback. After receiving that feedback, I finalized my answers for submission on December 6, 2021.

Senator Marsha Blackburn
Questions for the Record to John H. Chun
Nominee for the Western District of Washington

1. **Your name appears on a 2003 Supreme Court amicus brief that the King County Bar Association submitted for *Grutter v. Bolinger*. The brief argued that promoting diversity in the legal profession is a compelling governmental interest and that this compelling interest requires "race-sensitive" admissions. Do you still hold this view?**

   Response: At that time—about 18 years ago—I was serving on a team of lawyers representing the King County Bar Association. As lawyers, we zealously advocated on behalf of our client, pursuing their interests. However, for the last eight years, I have served as a state court judge at the trial and appellate levels, and so I am very familiar with the difference between the role of an advocate and that of a judge, which is to faithfully apply the law. As a sitting state appellate court judge and a federal judicial nominee, I believe that it would be inappropriate for me to express an opinion regarding affirmative action, as I seek to avoid the appearance that I have prejudged any issue that might come before me. If confirmed, as I have done as a state court judge, I will faithfully apply binding precedent regardless of any position I may have taken on behalf of a client in the past. I am aware that some of the United States Supreme Court precedents in this area include *Fisher v. Univ. of Texas at Austin*, 136 S. Ct. 2198 (2016); *Fisher v. Univ. of Texas at Austin*, 570 U.S. 297 (2013); *Grutter v. Bollinger*, 539 U.S. 306 (2003); *Gratz v. Bollinger*, 539 U.S. 244 (2003); and *Regents of Univ. of California v. Bakke*, 438 U.S. 265 (1978).

2. **Do you believe discrimination on the basis of race is permissible in college admissions?**

   Response: As a sitting state appellate court judge and a federal judicial nominee, I believe that it would be inappropriate for me to express an opinion regarding affirmative action, as I seek to avoid the appearance that I have prejudged any issue that might come before me. If confirmed, any personal beliefs I had about any issue would play no role in my judicial decisions; as I have done as a state court judge, I would faithfully apply binding precedent regardless of any personal views. I am aware that some of the United States Supreme Court precedents in this area include *Fisher v. Univ. of Texas at Austin*, 136 S. Ct. 2198 (2016); *Fisher v. Univ. of Texas at Austin*, 570 U.S. 297 (2013); *Grutter v. Bollinger*, 539 U.S. 306 (2003); *Gratz v. Bollinger*, 539 U.S. 244 (2003); *Regents of Univ. of California v. Bakke*, 438 U.S. 265 (1978).

3. **In your view, under what other circumstances is it okay to discriminate on the basis of race?**

   Response: As a sitting state appellate court judge and a federal judicial nominee, I believe that it would be inappropriate for me to express an opinion regarding affirmative action, as I seek to avoid the appearance that I have prejudged any issue that might come before

me. If confirmed, as I have done as a state court judge, I would faithfully apply binding precedent regardless of any personal views. In general, I am aware that many federal statutes, such as Title VII of the Civil Rights Act of 1964, prohibit discrimination on the basis of race.

4. **Is it okay to do so in hiring?**

   Response: Please see my response to No. 3 above.

5. **If you are confirmed as a U.S. District Judge, you would take part in appointing magistrate judges and hiring law clerks. Would you discriminate on the basis of race in selecting magistrate judges?**

   Response: If confirmed, I will seek to appoint magistrate judges who are best qualified for the position, and will do so in compliance with all applicable laws.

6. **What about in hiring law clerks?**

   Response: If confirmed, as I have done as a state court judge, I will seek to hire law clerks who are best qualified for the position, and will do so in compliance with all applicable laws.

Senator Mike Lee
Questions for the Record
John Chun, Nominee to the District Court for the Western District of Washington

1. How would you describe your judicial philosophy?

Response: In a given case, a judge should (1) thoroughly study the facts and arguments presented by the parties, diligently research the law, and apply the law with care; (2) be neutral, impartial, and open-minded in reaching decisions; (3) provide the parties with the full opportunity to be heard, treat them with dignity and respect, and issue timely rulings; and (4) base decisions solely on what the law demands and not on personal beliefs.

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

Response: The starting point for statutory interpretation is the plain language of the statute as well as any binding precedent interpreting that statute. If those do not squarely answer a question regarding the meaning of a statute, then a judge can turn to additional sources, including: (1) judicial interpretation of analogous statutory language, (2) canons of statutory construction, and (3) grammatical rules and presumptions about usage. Only if a statute remains ambiguous after this analysis should legislative history be considered.

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

Response: I would follow binding precedent interpreting the provision. I believe that it would be rare to confront a true constitutional issue of first impression as a federal district court judge, but if I encountered that circumstance, I would consider the text of the provision and the meaning of the terms at issue, and possibly analogous precedent as well as precedent from other circuits.

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

Response: The text and original meaning of a constitutional provision can play an important role in interpreting the Constitution. For example, the United States Supreme Court has, in some cases, interpreted constitutional provisions based on the original meaning of the text at issue in the case. *See, e.g.*, *Dist. of Columbia v. Heller*, 554 U.S. 570 (2008). But it has not done so in others. If confirmed, as I have done as a state court judge, I will follow all binding precedent concerning the appropriate method of constitutional interpretation in any case.

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 No. 2 above.

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

Response: I understand that "plain meaning" generally refers to the term's ordinary meaning at the time of enactment.

6. What are the constitutional requirements for standing?

Response: "A plaintiff has standing only if he can 'allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief.'" *California v. Texas*, 141 S. Ct. 2104 (2021) (quoting *Daimler Chrysler Corp. v. Cuno*, 547 U.S. 332, 342 (1992)).

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

Response: In *McCulloch v. Maryland*, 17 U.S. 316 (1819), the United States Supreme Court held that Congress has implied powers under the Necessary and Proper Clause to carry out the enumerated powers in the Constitution.

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

Response: I would look to binding precedent. If there was no such case, then I would look to the methodology employed by the United States Supreme Court and the Ninth Circuit in similar cases and apply those principles to guide my decision.

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

Response: The Ninth Amendment provides that "[t]he enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." In *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (citations and internal quotation marks omitted), the United States Supreme Court held that the Fifth and Fourteenth Amendments protect "those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition" and are "implicit in the concept of ordered liberty." There, the Court recognized that the "liberty" protected by the due process clauses includes "the rights to marry, *Loving v. Virginia*, 388 U.S. 1 (1967); to have children, *Skinner v. Oklahoma ex rel.*

Williamson, 316 U.S. 535 (1942); to direct the education and upbringing of one's children, *Meyer v. Nebraska*, 262 U.S. 390 (1923); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); to marital privacy, *Griswold v. Connecticut*, 381 U.S. 479 (1965); to use contraception, *ibid.*; *Eisenstadt v. Baird*, 405 U.S. 438 (1972); to bodily integrity, *Rochin v. California*, 342 U.S. 165 (1952), and to abortion, *Casey*, *supra*. We have also assumed, and strongly suggested, that the Due Process Clause protects the traditional right to refuse unwanted lifesaving medical treatment. *Cruzan*, 497 U.S., at 278–279." After *Glucksberg*, the Court recognized a right to interstate travel, *Saenz v. Roe*, 526 U.S. 489 (1999), and the right of same-sex couples to marry, *Obergefell v. Hodges*, 576 U.S. 644 (2015).

10. What rights are protected under substantive due process?

Response: Please see my response to No. 9 above.

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: My response to Nos. 9 and 10 above are not based upon my personal beliefs, but my understanding of the United States Supreme Court's precedent. The Court has held that the due process clauses protect the unenumerated rights identified in response to No. 9 because they are "deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty." *Washington v. Glucksberg*, 521 U.S. 702, 720–21 (1997) (internal quotation and citations omitted). The Court has not afforded the same protection to economic rights that were initially recognized in *Lochner v. New York*. *See, e.g., West Coast Hotel Co. v. Parrish,* 300 U.S. 379 (1937); *Williamson v. Lee Optical of Okla. Inc*., 348 U.S. 483 (1955). If confirmed, as I have done as a state court judge, I will faithfully apply binding precedent, regardless of any opinion I may have about the merits of the Court's decisions.

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

Response: The power is limited to three types of congressional action: Congress may regulate the use of the channels of interstate commerce, the instrumentalities of interstate commerce, and activity that substantially affects interstate commerce. *See United States v. Lopez*, 514 U.S. 549, 558-59 (1995).

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

Response: The United States Supreme Court has recognized "suspect classes" to include those that pertain to "immutable characteristic[s] determined solely by accident of birth," and classifications that pertain to those who are "saddled with such disabilities or subjected to 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." *Johnson v. Robison*, 415 U.S. 361, 375 n.14 (1974) (internal quotations and citations omitted). Classifications based upon race, alienage, national origin, and religion are suspect classes requiring strict scrutiny. *See Massachusetts Bd. of Retirement v. Murgia*, 427 U.S. 307, 312 n.4 (1976); *City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976).

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

Response: The role is foundational. The United States Supreme Court has recognized that "the system of separated powers and checks and balances established in the Constitution was regarded by the Framers as a self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of the other." *Morrison v. Olson*, 487 U.S. 654, 693 (1988) (internal quotation marks and citation omitted).

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: I would review the specific facts and the legal arguments offered by each litigant. I also would research and review binding precedent. After obtaining an understanding of the facts, the legal issues, and any applicable precedent, I would faithfully apply that precedent to the specific facts.

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

Response: Empathy should play no role in interpreting and applying the law. A judge must faithfully and impartially apply the law. A judge should also carefully listen to the litigants' positions and treat them with dignity and respect.

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

Response: Both are bad. A judge should seek to avoid such outcomes.

18. From 1789 to 1857, the Supreme Court exercised its power of judicial review to strike down federal statutes as unconstitutional only twice. Since then, the invalidation of federal statutes by the Supreme Court has become significantly

more common. What do you believe accounts for this change? What are the downsides to the aggressive exercise of judicial review? What are the downsides to judicial passivity?

Response: I have not studied what accounts for any such change. It is possible that it may relate to fewer statutes being passed in the earlier period. A potential downside to "aggressive exercise of judicial review" relates to how it may affect the democratic process. A potential downside to judicial passivity relates to how it may undermine constitutional protections.

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

Response: Black's Law Dictionary offers the following definition of "judicial review": "A court's power to review the actions of other branches or levels of government; esp., the courts' power to invalidate legislative and executive actions as being unconstitutional." And it provides the following definition for "judicial supremacy": "The doctrine that interpretations of the Constitution by the federal judiciary in the exercise of judicial review, esp. U.S. Supreme Court interpretations, are binding on the coordinate branches of the federal government and the states."

20. Abraham Lincoln explained his refusal to honor the Dred Scott decision by asserting that "If the policy of the Government upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the Supreme Court . . . the people will have ceased to be their own rulers, having to that extent practically resigned their Government into the hands of that eminent tribunal." How do you think elected officials should balance their independent obligation to follow the Constitution with the need to respect duly rendered judicial decisions?

Response: Elected officials have an independent obligation to follow the Constitution, and an obligation to respect judicial decisions. As a sitting state appellate court judge and a federal judicial nominee, I do not believe it would be appropriate for me to opine on how elected officials can best balance these obligations. To be sure, both are important for the rule of law.

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

Response: Judges must recognize their limited authority. They do not share the legislature's power to make the law or the executive's power to enforce it. A court's role is limited to interpreting the law and applying it only in cases involving actual controversies that are brought before it.

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?

Response: If I am confirmed as a district court judge, it will not be within my role to question the constitutional underpinnings of a case or limit its applicability below what binding precedent requires. A federal district judge must fully and faithfully apply binding precedent without regard to their personal views on the merits of any such precedent. If United States Supreme Court and circuit court precedent does not appear to speak directly to the issue at hand, I would diligently review the facts presented in the case and the arguments offered the litigants. I would also research and review all Supreme Court and Ninth Circuit precedent that might provide possible guidance as to the issue presented.

23. In applying a precedent that has questionable constitutional underpinnings, should a lower court judge extend the precedent to cover new cases, or limit its application where appropriate and reasonably possible?

Response: If I am confirmed as a district court judge, it will not be within my role to question the constitutional underpinnings of a case or limit its applicability below what binding precedent requires. A federal district judge must fully and faithfully apply binding precedent without regard to their personal views on the merits of any such precedent.

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

Response: The sentencing statute, 18 U.S.C. § 3553(a), sets forth the factors that a court is directed to consider in sentencing. It does not list a defendant's group identity as a factor.

25. 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 unfamiliar with this quote or its context. Also, as a sitting state appellate court judge and a federal judicial nominee, it would be inappropriate for me to state whether I agree with the Executive Branch's definition of "equity."

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

Response: I understand that both terms are defined in dictionaries, including legal dictionaries. But I also understand that the definitions of "equity" and "equality" are topics of public debate. As a sitting state appellate court judge and a federal judicial nominee, I generally refrain from publicly commenting on matters that may relate to issues that may come before me. If faced with a case involving these concepts, I would faithfully apply the applicable law, including any binding precedent.

27. Should equity be taken into consideration when determining the outcome of a case?

Response: Please see my response to No. 26 above.

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

Response: Please see my response to No. 26 above.

29. How do you define "systemic racism?"

Response: I do not have a personal definition, and I understand this term may be defined differently by different people. Some have defined it as relating to racial disparities resulting from policies, patterns, or practices, as opposed to discrete instances of discrimination by individual actors.

30. How do you define "critical race theory?"

Response: I do not have a personal definition. I understand that policymakers and academics have expressed views about "critical race theory." And I understand that some use the term to refer to an area of scholarship that looks at the intersection of race and the law. My understanding of the theory plays no role in my decision-making. I adjudicate all cases raising issues of racial discrimination on a case-by-case basis, applying binding precedent.

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

Response: Please see my responses to Nos. 29 and 30 above.

Senator Ben Sasse
Questions for the Record
Judge John H. Chun
U.S. Senate Committee on the Judiciary
Hearing: "Nominations"
November 17, 2021

Questions for all nominees:

1. **Since becoming a legal adult, have you participated in any events at which you or other participants called into question the legitimacy of the United States Constitution?**

   Response: No.

2. **Since becoming a legal adult, have you participated in any rallies, demonstrations, or other events at which you or other participants have willfully damaged public or private property?**

   Response: No.

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

   Response: In a given case, a judge should (1) thoroughly study the facts and arguments presented by the parties, diligently research the law, and apply the law with care; (2) be neutral, impartial, and open-minded in reaching decisions; (3) provide the parties with the full opportunity to be heard, treat them with dignity and respect, and issue timely rulings; and (4) base decisions solely on what the law demands and not on personal beliefs.

4. **Would you describe yourself as an originalist?**

   Response: I have not adopted any label for my method of interpreting the law. If confirmed, as I have done as a state court judge, I will following the interpretive method dictated by binding precedent, including originalism if that is what is dictated.

5. **Would you describe yourself as a textualist?**

   Response: I have not adopted any label for my method of interpreting the law. Although, as I note in response to No. 34 below, the starting point for statutory interpretation in the plain language of the statute as well as any binding precedent interpreting that statute. If confirmed, as I have done as a state court judge, I will following the interpretive method dictated by binding precedent.

6. **Do you believe the Constitution is a "living" document whose precise meaning can change over time? Why or why not?**

Response: I do not believe in any doctrine of a "living" Constitution. I believe the Constitution is an enduring document fundamental for our system of government. If confirmed, as I have done as a state court judge, I will faithfully interpret the Constitution as directed by binding precedent.

7. **Please name the Supreme Court Justice or Justices appointed since January 20, 1953 whose jurisprudence you admire the most and explain why.**

Response: I have admired a number of United States Supreme Court Justices appointed after January 20, 1953. But I have not meaningfully studied the jurisprudence of each such Justice, and thus cannot identify one whose body of work I most particularly admire.

8. **Was Marbury v. Madison correctly decided?**

Response: As a sitting state appellate court judge and a federal judicial nominee, generally, I believe it would be inappropriate for me to offer comments about the legitimacy of any United States Supreme Court decision because I am bound to apply such precedent regardless of any views I may hold. However, because I am aware prior judicial nominees have offered an opinion on this decision and its holding is unlikely to ever be challenged, I feel comfortable in stating that I believe *Marbury v. Madison* was correctly decided.

9. **Was Lochner v. New York correctly decided?**

Response: As a sitting state appellate court judge and a federal judicial nominee, generally, I believe it would be inappropriate for me to offer comments about the legitimacy of any United States Supreme Court decision because I am bound to apply such precedent regardless of any views I may hold. I understand that the case has effectively been abrogated.

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

Response: As a sitting state appellate court judge and a federal judicial nominee, generally, I believe it would be inappropriate for me to offer comments about the legitimacy of any United States Supreme Court decision because I am bound to apply such precedent regardless of any views I may hold. However, because I am aware prior judicial nominees have offered an opinion on this decision and its holding is unlikely to ever be challenged, I feel comfortable in stating that I believe *Brown v. Board of Education* was correctly decided.

11. **Was Bolling v. Sharpe correctly decided?**

Response: As a sitting state appellate court judge and a federal judicial nominee, generally, I believe it would be inappropriate for me to offer comments about the legitimacy of any United States Supreme Court decision because I am bound to apply such precedent regardless of any views I may hold. However, because I am aware prior

judicial nominees have offered an opinion on this decision and its holding is unlikely to ever be challenged, I feel comfortable in stating that I believe *Bolling v. Sharpe* was correctly decided.

12. Was Cooper v. Aaron correctly decided?

Response: Please see my response to No. 9 above.

13. Was Mapp v. Ohio correctly decided?

Response: Please see my response to No. 9 above.

14. Was Gideon v. Wainwright correctly decided?

Response: Please see my response to No. 9 above.

15. Was Griswold v. Connecticut correctly decided?

Response: Please see my response to No. 9 above.

16. Was South Carolina v. Katzenbach correctly decided?

Response: Please see my response to No. 9 above.

17. Was Miranda v. Arizona correctly decided?

Response: Please see my response to No. 9 above.

18. Was Katzenbach v. Morgan correctly decided?

Response: Please see my response to No. 9 above.

19. Was Loving v. Virginia correctly decided?

Response: As a sitting state appellate court judge and a federal judicial nominee, generally, I believe it would be inappropriate for me to offer comments about the legitimacy of any United States Supreme Court decision because I am bound to apply such precedent regardless of any views I may hold. However, because I am aware prior judicial nominees have offered an opinion on this decision and its holding is unlikely to ever be challenged, I feel comfortable in stating that I believe *Loving v. Virginia* was correctly decided.

20. Was Katz v. United States correctly decided?

Response: Please see my response to No. 9 above.

21. Was Roe v. Wade correctly decided?

Response: Please see my response to No. 9 above.

22. Was Romer v. Evans correctly decided?

Response: Please see my response to No. 9 above.

23. Was United States v. Virginia correctly decided?

Response: Please see my response to No. 9 above.

24. Was Bush v. Gore correctly decided?

Response: Please see my response to No. 9 above.

25. Was District of Columbia v. Heller correctly decided?

Response: Please see my response to No. 9 above.

26. Was Crawford v. Marion County Election Board correctly decided?

Response: Please see my response to No. 9 above.

27. Was Boumediene v. Bush correctly decided?

Response: Please see my response to No. 9 above.

28. Was Citizens United v. Federal Election Commission correctly decided?

Response: Please see my response to No. 9 above.

29. Was Shelby County v. Holder correctly decided?

Response: Please see my response to No. 9 above.

30. Was United States v. Windsor correctly decided?

Response: Please see my response to No. 9 above.

31. Was Obergefell v. Hodges correctly decided?

Response: Please see my response to No. 9 above.

32. In the absence of controlling Supreme Court precedent, what substantive factors determine whether it is appropriate for appellate court to reaffirm its own precedent that conflicts with the original public meaning of the Constitution?

Response: I have been nominated for the position of a district judge not a circuit judge. If confirmed, issues regarding the reaffirmation of circuit precedent by the circuit will not be reviewed by me.

33. In the absence of controlling Supreme Court precedent, what substantive factors determine whether it is appropriate for an appellate court to reaffirm its own precedent that conflicts with the original public meaning of the text of a statute?

Response: Please see my response to No. 32 above.

34. What role should extrinsic factors not included within the text of a statute, especially legislative history and general principles of justice, play in statutory interpretation?

Response: The starting point for statutory interpretation is the plain language of the statute as well as any binding precedent interpreting that statute. If those do not squarely answer a question regarding the meaning of a statute, then a judge can turn to additional sources, including: (1) judicial interpretation of analogous statutory language, (2) canons of statutory construction, and (3) grammatical rules and presumptions about usage. Only if a statute remains ambiguous after this analysis should legislative history be considered. Because a judge must apply the law impartially, decisions should not be based on "general principles of justice."

35. If defendants of a particular minority group receive on average longer sentences for a particular crime than do defendants of other racial or ethnic groups, should that disparity factor into the sentencing of an individual defendant? If so, how so?

Response: No. Federal sentencing judges must apply the sentencing guidelines to each defendant individually in accordance with the factors laid out in 18 U.S.C. § 3553(a). These factors include "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." The statute does not authorize consideration of treating similarly-situated defendants differently in order to correct systemic sentencing disparities.

Questions from Senator Thom Tillis for John H. Chun
Nominee to be United States District Judge for the Western District of Washington

1. **Do you believe that a judge's personal views are irrelevant when it comes to interpreting and applying the law?**

   Response: Yes.

2. **What is judicial activism? Do you consider judicial activism appropriate?**

   Response: I understand that definitions of the term "judicial activism" may vary. If it refers to basing decisions on a judge's personal political or policy views, rather than the applicable law, I consider it inappropriate.

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

   Response: An expectation.

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

   Response: No.

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

   Response: A judge may reach a decision that is, in the judge's personal opinion, an undesirable outcome. But a judge must faithfully interpret and apply the law regardless of the outcome. When this duty is fulfilled, there is no issue to be reconciled.

6. **Should a judge interject his or her own politics or policy preferences when interpreting and applying the law?**

   Response: No.

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

   Response: I would apply United State Supreme Court precedent, including, but not limited to, *Dist. of Columbia v. Heller*, 554 U.S. 570 (2008) and *McDonald v. City of Chicago*, 561 U.S. 742 (2010), as well as Ninth Circuit precedent, including, but not limited to, *Young v. Hawaii*, 992 F.3d 765 (9th Cir. 2021).

8. **How would you evaluate a lawsuit challenging a Sheriff's policy of not processing handgun purchase permits? Should local officials be able to use a crisis, such as**

COVID-19 to limit someone's constitutional rights? In other words, does a pandemic limit someone's constitutional rights?

Response: In any such case, I would apply binding precedent. Because I am a sitting state appellate court judge and federal judicial nominee, and because cases relating to COVID-19 restrictions are being litigated in the courts, I do not believe it would be appropriate for me to opine on this hypothetical scenario.

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

Response: "[O]fficers are entitled to qualified immunity under [42 U.S.C.] § 1983 unless (1) they violated a federal statutory or constitutional right, and (2) the unlawfulness of their conduct was 'clearly established at the time.'" *Dist. of Columbia v. Wesby*, 138 S. Ct. 577, 589 (2018) (quoting *Reichle v. Howards*, 566 U.S. 658, 664 (2012)). To be "clearly established," the law must be "'sufficiently clear' that every 'reasonable official would understand that what he is doing'" is unlawful. *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011) (quoting *Anderson v. Creighton*, 483 U.S. 635, 640 (1987)). The Ninth Circuit echoed the Supreme Court's standards in *Foster v. City of Indio*, 908 F.3d 1204, 1210-11 (9th Cir. 2019). If a case involving qualified immunity came before me, I would faithfully apply the applicable law to the specific facts of the case.

10. **Do you believe that qualified immunity jurisprudence provides sufficient protection for law enforcement officers who must make splitsecond decisions when protecting public safety?**

Response: As a sitting state appellate court judge and federal judicial nominee, I do not believe it would be appropriate for me to opine on whether current qualified immunity jurisprudence, including United State Supreme Court cases, provides sufficient protection for law enforcement officers. I am, and would be, bound to apply such precedent regardless of any views I may hold. If a case involving qualified immunity came before me, I would faithfully apply the applicable law to the specific facts of the case.

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

Response: Please see my response to No. 10 above.

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

Response: I have been a state court judge for almost eight years, was a commercial and employment litigator for over 18 years, and was a federal judicial law clerk for one year. In those 27 years, I have had limited experience with patent law. If confirmed to the Western District of Washington, and if a patent case came before me, I would commit to deeply researching the applicable precedent and applying it to the facts in the record. As a federal judicial nominee, I do not believe it would be appropriate for me to opine on the United States Supreme Court's patent eligibility jurisprudence. I would be bound to apply such precedent regardless of any views I may hold.

13. **How would you apply current patent eligibility jurisprudence to the following hypotheticals. Please avoid giving non-answers and actually analyze these hypotheticals.**

    a. ***ABC Pharmaceutical Company*** **develops a method of optimizing dosages of a substance that has beneficial effects on preventing, treating or curing a disease or condition for individual patients, using conventional technology but a newly-discovered correlation between administered medicinal agents and bodily chemicals or metabolites. Should this invention be patent eligible?**

    Response: As a federal judicial nominee, I do not believe it would be appropriate for me to opine on such factual hypotheticals, as it could suggest that I am prejudging an issue. I thus agree with other judicial nominees who have declined to analyze such hypothetical scenarios. If presented with such a case, I would faithfully apply binding precedent.

    b. ***FinServCo*** **develops a valuable proprietary trading strategy that demonstrably increases their profits derived from trading commodities. The strategy involves a new application of statistical methods, combined with predictions about how trading markets behave that are derived from insights into human psychology. Should *FinServCo*'s business method standing alone be eligible? What about the business method as practically applied on a computer?**

    Response: Please see my response to No. 13.a above.

    c. ***HumanGenetics*** **Company wants to patent a human gene or human gene fragment as it exists in the human body. Should that be patent eligible? What if *HumanGenetics* Company wants to patent a human gene or fragment that contains sequence alterations provided by an engineering process initiated by humans that do not otherwise exist in nature? What if the engineered alterations were only at the end of the human gene or fragment and merely removed one or more contiguous elements?**

    Response: Please see my response to No. 13.a above.

d. *BetterThanTesla ElectricCo* develops a system for billing customers for charging electric cars. The system employs conventional charging technology and conventional computing technology, but there was no previous system combining computerized billing with electric car charging. Should *BetterThanTesla*'s billing system for charging be patent eligible standing alone? What about when it explicitly claims charging hardware?

Response: Please see my response to No. 13.a above.

e. *Natural Laws and Substances, Inc.* specializes in isolating natural substances and providing them as products to consumers. Should the isolation of a naturally occurring substance other than a human gene be patent eligible? What about if the substance is purified or combined with other substances to produce an effect that none of the constituents provide alone or in lesser combinations?

Response: Please see my response to No. 13.a above.

f. A business methods company, *FinancialServices Troll*, specializes in taking conventional legal transaction methods or systems and implementing them through a computer process or artificial intelligence. Should such implementations be patent eligible? What if the implemented method actually improves the expected result by, for example, making the methods faster, but doesn't improve the functioning of the computer itself? If the computer or artificial intelligence implemented system does actually improve the expected result, what if it doesn't have any other meaningful limitations?

Response: Please see my response to No. 13.a above.

g. *BioTechCo* discovers a previously unknown relationship between a genetic mutation and a disease state. No suggestion of such a relationship existed in the prior art. Should *BioTechCo* be able to patent the gene sequence corresponding to the mutation? What about the correlation between the mutation and the disease state standing alone? But, what if *BioTechCo* invents a new, novel, and nonobvious method of diagnosing the disease state by means of testing for the gene sequence and the method requires at least one step that involves the manipulation and transformation of physical subject matter using techniques and equipment? Should that be patent eligible?

Response: Please see my response to No. 13.a above.

h. Assuming *BioTechCo*'s diagnostic test is patent eligible, should there exist provisions in law that prohibit an assertion of infringement against patients receiving the diagnostic test? In other words, should there be a testing exemption for the patient health and benefit? If there is such an exemption, what are its limits?

Response: Please see my response to No. 13.a above.

i. ***Hantson Pharmaceuticals*** **develops a new chemical entity as a composition of matter that proves effective in treating TrulyTerribleDisease. Should this new chemical entity be patent eligible?**

Response: Please see my response to No. 13.a above.

j. ***Stoll Laboratories*** **discovers that superconducting materials superconduct at much higher temperatures when in microgravity. The materials are standard superconducting materials that superconduct at lower temperatures at surface gravity. Should *Stoll Labs* be able to patent the natural law that superconductive materials in space have higher superconductive temperatures? What about the space applications of superconductivity that benefit from this effect?**

Response: Please see my response to No. 13.a above.

14. Based on the previous hypotheticals, do you believe the current jurisprudence provides the clarity and consistency needed to incentivize innovation? How would you apply the Supreme Court's ineligibility tests—laws of nature, natural phenomena, and abstract ideas—to cases before you?

Response: As a federal judicial nominee, I do not believe it would be appropriate for me to opine on the quality of United States Supreme Court jurisprudence. I would be bound to apply such precedent regardless of any views I may hold. If a case involving patent eligibility came before me, I would faithfully apply the applicable law to the specific facts of the case.

15. Copyright law is a complex area of law that is grounded in our constitution, protects creatives and commercial industries, and is shaped by our cultural values. It has become increasingly important as it informs the lawfulness of a use of digital content and technologies.

a. **What experience do you have with copyright law?**

Response: I was a federal law clerk for one year, was a commercial and employment litigation for over 18 years, and have been a state court judge for almost eight years. In those 27 years, I have had limited experience with copyright law.

b. **Please describe any particular experiences you have had involving the Digital Millennium Copyright Act.**

Response: None.

c. What experience do you have addressing intermediary liability for online service providers that host unlawful content posted by users?

Response: None.

d. What experience do you have with First Amendment and free speech issues? Do you have experience addressing free speech and intellectual property issues, including copyright?

Response: As a state trial and appellate judge, I have worked on numerous cases involving First Amendment and free speech issues. I do not believe I have any experience involving both free speech and intellectual property issues.

16. The legislative history of the Digital Millennium Copyright Act reinforces the statutory text that Congress intended to create an obligation for online hosting services to address infringement even when they do not receive a takedown notice. However, the Copyright Office recently reported courts have conflated statutory obligations and created a "high bar" for "red flag knowledge, effectively removing it from the statute..." It also reported that courts have made the traditional common law standard for "willful blindness" harder to meet in copyright cases.

a. In your opinion, where there is debate among courts about the meaning of legislative text, what role does or should Congressional intent, as demonstrated in the legislative history, have when deciding how to apply the law to the facts in a particular case?

Response: The starting point for statutory interpretation is the plain language of the statute as well as any binding precedent interpreting that statute. If those do not squarely answer a question regarding the meaning of a statute, then a judge can turn to additional sources, including: (1) judicial interpretation of analogous statutory language, (2) canons of statutory construction, and (3) grammatical rules and presumptions about usage. Only if a statute remains ambiguous after this analysis should legislative history be considered.

b. Likewise, what role does or should the advice and analysis of the expert federal agency with jurisdiction over an issue (in this case, the U.S. Copyright Office) have when deciding how to apply the law to the facts in a particular case?

Response: The interpretation of legislative text contained in an agency opinion letter, policy statement, agency manual, or enforcement guideline, does not warrant *Chevron*-style deference. *Christensen v. Harris County*, 529 U.S. 576, 587 (2000). Instead, *Skidmore* deference, as set forth in *Skidmore v. Swift*, 323 U.S. 134 (1944), applies to such interpretations and provides that interpretations contained in such

formats are entitled to respect, but only to the extent they are persuasive.

c. Do you believe that awareness of facts and circumstances from which copyright infringement is apparent should suffice to put an online service provider on notice of such material or activities, requiring remedial action?

Response: As federal judicial nominee, I do not believe that it would be appropriate for me to comment on an issue that might come before me. If such a case came before me, I would look to applicable law, including the Digital Millennium Copyright Act, and precedent.

17. The scale of online copyright infringement is breathtaking. The DMCA was developed at a time when digital content was disseminated much more slowly and there was a lot less infringing material online.

a. How can judges best interpret and apply to today's digital environment laws like the DMCA that were written before the explosion of the internet, the ascension of dominant platforms, and the proliferation of automation and algorithms?

Response: Judges must interpret and apply statutes as written. Whether to enact new laws due to advancements in the digital environment is a policy matter left to the legislature.

b. How can judges best interpret and apply prior judicial opinions that relied upon the then-current state of technology once that technological landscape has changed?

Response: If confirmed as a federal district judge, I would be bound to follow Supreme Court and Ninth Circuit precedent. Those courts have the power to overrule their prior decisions.

18. To prevent the possibility of judge-shopping by allowing patent litigants to select a single-judge division in which their case will be heard, would you support a local rule that requires all patent cases to be assigned randomly to judges across the district, regardless of which division the judge sits in?

Response: I served on the Rules Committee at King County Superior Court and currently serve on the Rules Committee of the Washington State Court of Appeals. I am a nominee to be a federal district judge on the Western District of Washington. If confirmed, I would bring a depth of experience with rules to that district. In the Western District of Washington, there is no single-judge division. Before deciding whether I would support an existing local rule or a local rule change at the district, I would consult judicial officers and

staff there and research the matter as to federal district courts around the nation. For example, I understand that the Eastern District of Virginia implemented such a rule change, and I would want to study the situation there.

19. In some judicial districts, plaintiffs are allowed to request that their case be heard within a particular division of that district. When the requested division has only one judge, these litigants are effectively able to select the judge who will hear their case. In some instances, this ability to select a specific judge appears to have led to individual judges engaging in inappropriate conduct to attract certain types of cases or litigants.

a. Do you think it is ever appropriate for judges to engage in "forum selling" by proactively taking steps to attract a particular type of case or litigant?

Response: As mentioned in my response above to No. 18, I am a nominee to be a federal district judge on the Western District of Washington. In that district, there is no single-judge division. Based on the description above, I cannot currently envision a circumstance when "forum selling" would be appropriate.

b. If so, please explain your reasoning. If not, do you commit not to engage in such conduct?

Response: I can commit not to engage in any inappropriate conduct that would violate the Code of Conduct for United States Judges and/or run afoul of any applicable law.

20. I have expressed concerns about the fact that nearly one quarter of all the patent cases filed in the U.S. are assigned to just one of the more than 600 district court judges in the country.

a. Do you see "judge shopping" and "forum shopping" as a problem in litigation?

Response: I understand generally that judge shopping and forum shopping have historically been, and continue to be, problems in litigation. A number of courts and scholars see judge and forum shopping generally as potentially harmful to the maintenance of fairness, equity, and efficiency of the judicial system. *See, e.g., United States v. State Water Res. Control Bd.*, 988 F.3d 1194, 1203, 1206–207 (9th Cir. 2021) ("the desire to avoid forum shopping" is a factor in determining whether a stay is appropriate); *Dakota Rule Action v. United States Dep't of Agric.*, No. CV 18-2852 (BAH), 2019 WL 1440134, at *1 (D.D.C. Apr. 1, 2019) ("The general rule is that all new cases filed in this courthouse are randomly assigned . . . in order to ensure greater public confidence in the integrity of the judicial process, guarantee[ ] fair and equal distribution of cases to all judges, avoid public perception or appearance of favoritism in assignments, and reduce[ ] opportunities for judge-shopping.") (internal quotations omitted); *Robinson v. Boeing Co.*, 79 F.3d 1053,

1054–56 (11th Cir. 1996) (discussing the value of local judges adjudicating local matters and the impact of judge shopping); *Standing Comm. On Discipline of U.S. Dist. Ct. for Cent. Dist. Of California v. Yagman*, 55 F.3d 1430, 1443 (9th Cir. 1995) (generally discussing that "[j]udge-shopping doubtless disrupts the proper functioning of the judicial system"); *McCuin v. Texas Power & Light Co*., 714 F.2d 1255 (5th Cir. 1983) (discussing the tactic of selecting counsel to disqualify a judge: "such conduct brings the judicial system itself into disrepute. . . . [And] would tarnish the concept of impartial justice"); J. Jonas Anderson & Paul R. Gugliuzza, *Federal Judge Seeks Patent Cases*, 71 Duke L. J. 419 (2021).

b. If so, do you believe that district court judges have a responsibility not to encourage such conduct?

Response: I believe that judges in the Western District of Washington have the responsibility to follow the patent venue statutes, Supreme Court precedent, Ninth Circuit precedent, federal court rules, and any applicable local rules. *See In TC Heartland LLC v. Kraft Foods Grp. Brands LLC*, 137 S. Ct. 1514, 1517 (2017) (holding "that a domestic corporation 'resides' only in its State of incorporation for purposes of the patent venue statute"); 28 U.S.C. § 1400(b), § 1404. Also, federal judges are bound by the Code of Conduct for United States Judges. I do not believe that district court judges should encourage judge shopping or forum shopping.

21. In just three years, the Court of Appeals for the Federal Circuit has granted no fewer than 19 mandamus petitions ordering a particular sitting district court judge to transfer cases to a different judicial district. The need for the Federal Circuit to intervene using this extraordinary remedy so many times in such a short period of time gives me grave concerns.

a. What should be done if a judge continues to flaunt binding case law despite numerous mandamus orders?

Response: As a sitting state appellate court judge and a nominee to be federal district court judge, I do not believe it would be appropriate for me to comment on how the Federal Circuit should address this hypothetical circumstance. If confirmed, as I have done as a state court judge, I would faithfully apply binding precedent.

b. Do you believe that some corrective measure beyond intervention by an appellate court is appropriate in such a circumstance?

Response: Please see my response to No. 21.a above. Also, federal district judges are subject to the Code of Conduct for United States Judges. To the extent this question raises a policy matter, it is the province of the legislature. If confirmed, as I have done as a state court judge, I would faithfully apply binding precedent.

22. When a particular type of litigation is overwhelmingly concentrated in just one or two of the nation's 94 judicial districts, does this undermine the perception of fairness and of the judiciary's evenhanded administration of justice?

Response: Please see my response to No. 20.a above. Also, federal district judges are subject to the Code of Conduct for United States Judges. Under Canon 3 of the Code, they are required to perform the duties of the office fairly and impartially. To the extent this question raises a policy matter, it is the province of the legislature.

a. If litigation does become concentrated in one district in this way, is it appropriate to inquire whether procedures or rules adopted in that district have biased the administration of justice and encouraged forum shopping?

Response: Please see my response to No. 22 above. Also, I believe that it is appropriate to inquire whether any procedures or rules adopted in a district have biased the administration of justice.

23. Mandamus is an extraordinary remedy that the court of appeals invokes against a district court only when the petitioner has a clear and indisputable right to relief and the district judge has clearly abused his or her discretion. Nearly every issuance of mandamus may be viewed as a rebuke to the district judge, and repeated issuances of mandamus relief against the same judge on the same issue suggest that the judge is ignoring the law and flouting the court's orders.

a. If a single judge is repeatedly reversed on mandamus by a court of appeals on the same issue within a few years' time, how many such reversals do you believe must occur before an inference arises that the judge is behaving in a lawless manner?

Response: As a sitting state appellate court judge and a federal judicial nominee, I do not believe it would be appropriate for me to answer this hypothetical question. That said, federal district judges are subject to the Code of Conduct for United States Judges.

b. Would five mandamus reversals be sufficient? Ten? Twenty?

Response: Please see my response to No. 23.a above.