Senator Dick Durbin
Chair, Senate Judiciary Committee
Written Questions for Judge DeAndrea Benjamin
Nominee to the Court of Appeals for the Fourth Circuit
November 22, 2022

1. **Since joining the bench, you have been precluded from providing direct pro bono services to clients. However, you have dedicated a significant amount of time to the South Carolina legal community by making presentations to schools for Constitution Day, participating in career fairs, and volunteering for the South Carolina Bar's Mock Trial program.**

   a. **In your view, how important is it that judges participate in this kind of community outreach?**

   Response: Beginning in law school at the University of South Carolina School of Law and continuing over the course of my career in the South Carolina legal community, I have been involved in community service and pro bono work. Judges, as highly visible members of the government, are able to show young people parts of the government process that they may not be as familiar with. I have spoken at Constitution Day events and career days, given presentations on civics to students, and judged mock trial competitions in various locations across South Carolina. Judges have the unique opportunity to guide students through the court process. Additionally, I regularly allow students to "shadow" me for the public facing portions of my job in order to gain an inside perspective and understanding of the judicial system and the democratic process. I also participate in the University of South Carolina School of Law's extern and internship program and often speak to classes at the University of South Carolina School of Law.

   As a law school student and young lawyer, I benefited significantly from South Carolina lawyers and judges who served as role models and professional mentors. These individuals helped me become an effective lawyer in private practice, as an assistant solicitor, an assistant attorney general, municipal judge, and now as a state trial judge. I hope I am able to do the same for law students and young lawyers now.

   b. **If confirmed to the Fourth Circuit, would you still intend to dedicate time to these kinds of programs?**

   Response: Yes, if I am confirmed to the Fourth Circuit I intend on continuing my commitment to law-related education and community outreach.

Senator Chuck Grassley, Ranking Member
Questions for the Record
Judge DeAndrea Gist Benjamin
Judicial Nominee to the United States Court of Appeals for the Fourth Circuit

1. **During your hearing, a senator stated that you had likely written thousands of opinions. You noted that you had handled thousands of cases. How many opinions have you written that are five pages or longer?**

   Response: Over the course of my career I have handled thousands of cases and presided over hundreds of trials. Each trial required me to weigh evidence, rule on pre-trial and post-trial motions, and determine the admissibility of testimony and evidence. The state of South Carolina does not publish its trial court opinions, so I cannot provide the number of orders or opinions I have written over five pages. However, I would estimate that I have written several hundred orders over the last eleven and a half years.

2. **Please estimate the percent of your orders and opinions that are longer than two pages.**

   Response: While I don't have an exact number of my written orders (not including bench orders) that are longer than two pages, I would estimate that more than ninety (90%) percent of my written orders are over two pages.

3. **Should you be confirmed, what specific factors will you take into consideration when deciding whether to overturn circuit precedent?**

   Response: The Fourth Circuit has instructed that "the basic principle [holds] that one panel cannot overrule a decision issued by another panel … application of th[is] basic rule … requires a panel to follow the earlier of the conflicting opinions." *McMellon v. United States*, 387 F.3d 329, 332-333 (4th Cir. 2004). A circuit court may only overrule a panel decision by sitting *en banc*, which may occur when "(1) en banc consideration is necessary to secure or maintain uniformity of the court's decisions; or (2) the proceeding involves a question of exceptional importance." Fed. R. App. P. 35.

4. **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: Disagree.

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

   Response: I am not familiar with Judge Reinhardt's statement. If I am confirmed to the Fourth Circuit, I will follow all Supreme Court and Fourth Circuit precedent.

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

   Response: No.

7. **Do you believe lower courts are bound by decisions of the Supreme Court?**

   Response: Yes.

8. **Do you believe lower courts can distinguish a Supreme Court decision based on facts or arguments that were not crucial to the Court's decision?**

   Response: The Fourth Circuit has instructed that "we cannot ignore the Supreme Court's explicit guidance simply by labeling it 'dicta' … we are obliged to afford great weight to Supreme Court dicta." *Hengle v. Treppa*, 19 F.4th 324, 346-347 (4th Cir. 2021) (internal quotation marks and citations omitted).

9. **Are circuit court and Supreme Court decisions binding on anyone other than the parties to the case?**

   Response: Yes.

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

    Response: Yes. The Constitution is a fixed, enduring document that is able to adapt to the issues of today. In *New York State Rifle & Pistol Association v. Bruen*, 142 S. Ct. 2111 (2022), the Supreme Court recognized that "[a]lthough its meaning is fixed according to the understandings of those who ratified it, the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated." *Id.* at 2132.

11. **Please identify a Supreme Court decision from the last 50 years that exemplifies your judicial philosophy and explain why.**

    Response: I have served as a judge in various capacities since 2004. Over the course of my career I have handled thousands of cases and presided over hundreds of trials. Each trial required me to weigh evidence, rule on pre-trial and post-trial motions, and determine the admissibility of testimony and evidence. I approach each case

individually. I listen carefully to arguments by the parties, treat every litigant and counsel respectfully, conduct legal research, and apply binding precedent to the facts of the specific case before me. If I am confirmed to the Fourth Circuit, I will approach each case individually with a keen focus on the record and an appreciation of the limited role of the appellate court and the deference given to the trial court, asking thoughtful questions during oral arguments, and following all Supreme Court and Fourth Circuit precedent.

I have also had the opportunity to sit on the South Carolina Supreme Court several times by designation. There too, I listened carefully to the arguments made by the parties, treated litigants and their counsel respectfully, conducted legal research, and discussed the cases with an open mind with the other Justices on the court in order to reach the best legal decision possible. I approached each case individually, gained a consensus with the Justices, and created binding precedent in my state. If I am confirmed to the Fourth Circuit, I will approach each case individually with a keen focus on the record and an appreciation of the limited role of the appellate court and the deference given to the trial court on questions of fact, I will approach discussions with my fellow circuit judges respectfully and with an open mind, and I will follow all Supreme Court and Fourth Circuit precedent.

12. **Please identify a Fourth Circuit decision from the last 50 years that exemplifies your judicial philosophy and explain why.**

Response: I have served as a judge in various capacities since 2004. Over the course of my career I have handled thousands of cases and presided over hundreds of trials. Each trial required me to weigh evidence, rule on pre-trial and post-trial motions, and determine the admissibility of testimony and evidence. I approach each case individually. I listen carefully to arguments by the parties, treat every litigant and counsel respectfully, conduct legal research, and apply binding precedent to the facts of the specific case before me. If I am confirmed to the Fourth Circuit, I will approach each case individually with a keen focus on the record and an appreciation of the limited role of the appellate court and the deference given to the trial court, asking thoughtful questions during oral arguments, and following all Supreme Court and Fourth Circuit precedent.

I have also had the opportunity to sit on the South Carolina Supreme Court several times by designation There too, I listened carefully to the arguments made by the parties, treated litigants and their counsel respectfully, conducted legal research, and discussed the cases with an open mind with the other Justices on the court in order to reach the best legal decision possible. I approached each case individually, gained a consensus with the Justices, and created binding precedent in my state. If I am confirmed to the Fourth Circuit, I will approach each case individually with a keen focus on the record and an appreciation of the limited role of the appellate court and the deference given to the trial court on questions of fact, I will approach discussions with my fellow circuit judges respectfully and with an open mind, and I will follow all Supreme Court and Fourth Circuit precedent.

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

Response: As a sitting judge and judicial nominee, it would be inappropriate for me to respond because this issue is for policymakers to consider.

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

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

Response: As a sitting judge and judicial nominee, it would be inappropriate for me to comment on the merits of Supreme Court precedent. *Brown v. Board of Education* and *Loving v. Virginia* are an exception to this general practice in that both of these cases are well-settled law and not likely to be challenged. Like other nominees, I will state that they were correctly decided.

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

Response: As a sitting judge and judicial nominee, it would be inappropriate for me to comment on the merits of Supreme Court precedent. *Brown v. Board of Education* and *Loving v. Virginia* are an exception to this general practice in that both of these cases are well-settled law and not likely to be challenged. Like other nominees, I will state that they were correctly decided.

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

Response: As a sitting judge and judicial nominee, it would be inappropriate for me to comment on the merits of Supreme Court precedent. The Supreme Court overturned *Roe v. Wade* in *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022). If I am confirmed to the Fourth Circuit, I will faithfully apply all Supreme Court and Fourth Circuit precedent.

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

Response: As a sitting judge and judicial nominee, it would be inappropriate for me to comment on the merits of Supreme Court precedent. The Supreme Court overturned *Planned Parenthood v. Casey* in *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022). If I am confirmed to the Fourth Circuit, I will faithfully apply all Supreme Court and Fourth Circuit precedent.

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

Response: As a sitting judge and judicial nominee, it would be inappropriate for me to comment on the merits of Supreme Court precedent. If I am confirmed to

the Fourth Circuit, I will faithfully apply all Supreme Court and Fourth Circuit precedent.

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

Response: As a sitting judge and judicial nominee, it would be inappropriate for me to comment on the merits of Supreme Court precedent. If I am confirmed to the Fourth Circuit, I will faithfully apply all Supreme Court and Fourth Circuit precedent.

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

Response: As a sitting judge and judicial nominee, it would be inappropriate for me to comment on the merits of Supreme Court precedent. If I am confirmed to the Fourth Circuit, I will faithfully apply all Supreme Court and Fourth Circuit precedent.

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

Response: As a sitting judge and judicial nominee, it would be inappropriate for me to comment on the merits of Supreme Court precedent. If I am confirmed to the Fourth Circuit, I will faithfully apply all Supreme Court and Fourth Circuit precedent.

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

Response: As a sitting judge and judicial nominee, it would be inappropriate for me to comment on the merits of Supreme Court precedent. If I am confirmed to the Fourth Circuit, I will faithfully apply all Supreme Court and Fourth Circuit precedent.

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

Response: As a sitting judge and judicial nominee, it would be inappropriate for me to comment on the merits of Supreme Court precedent. If I am confirmed to the Fourth Circuit, I will faithfully apply all Supreme Court and Fourth Circuit precedent.

15. **What is your philosophy on "judicial activism," and what effect should judges have in setting or promoting public policy?**

Response: Judicial activism is when a judge allows their personal opinion or beliefs to affect their decisionmaking. Judicial activism is never appropriate.

16. **Does praying on the sidewalk outside of an abortion clinic qualify as "the peaceful expression of [an] unpopular view[]"?**

Response: As a sitting judge and judicial nominee for the Court of Appeals for the Fourth Circuit, Rule 501, Canon 2(A) of the South Carolina Appellate Court Rules, and Canon 3(A)(6) of the Code of Conduct for United States Judges, respectively, prevent me from commenting on issues that are pending or may come before the court. If I am confirmed to the Fourth Circuit and an issue came before me related to this issue, I would approach the case individually, carefully consider the facts in the record, and apply all applicable Supreme Court and Fourth Circuit precedent.

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

Response: 18 U.S.C. § 1507 applies to: "Whoever, with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty, pickets or parades in or near a building housing a court of the United States, or in or near a building or residence occupied or used by such judge, juror, witness, or court officer, or with such intent uses any sound-truck or similar device or resorts to any other demonstration in or near any such building or residence[.]"

18. **Under Supreme Court precedent, is 18 USC *§* 1507 or a state analog statute constitutional on its face?**

Response: As a sitting judge and judicial nominee for the Court of Appeals for the Fourth Circuit, it would be inappropriate for me to offer an opinion on this matter. If I am confirmed to the Fourth Circuit and an issue came before me related to 18 U.S.C. § 1507, I would approach the case individually, carefully consider the facts in the record, and apply all applicable Supreme Court and Fourth Circuit precedent.

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

Response: The Supreme Court has held that states are free to ban "fighting words," or "those personally abusive epithets which, when addressed to the ordinary citizen, are, as a matter of common knowledge, inherently likely to provoke violent reaction." *Cohen v. California*, 403 U.S. 15, 20 (1971); see also *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942).

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

Response: The First Amendment protects freedom of speech, but that right is not unlimited. True threats encompass 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. *Virginia v. Black*, 538 U.S. 343, 359–360 (2003). The Supreme Court further clarified in *Virginia* that, "the speaker need not actually intend to carry out the threat. Rather, a prohibition on true threats 'protect[s] individuals from the fear of violence' and 'from the disruption that fear engenders,'" in addition to protecting people "from the possibility that the threatened violence will occur." *Id.*

21. **Do you think the Supreme Court should be expanded?**

    Response: As a sitting judge and judicial nominee, it would be inappropriate for me to respond because this issue is for policymakers to consider.

22. **Is the federal judicial system systemically racist? Please explain.**

    Response: I have served as a judge since 2004, first on the municipal court and currently on the Fifth Judicial Circuit in South Carolina. In every case that I have presided over, I have endeavored to treat each litigant impartially and without bias and would continue to do so if confirmed to the Fourth Circuit. Questions about systemic issues in the federal judicial system are best left to policymakers.

    a. **If you answered yes, if confirmed how will you feel comfortable working in a systemically racist system?**

       Response: Please see my response to Question 22.

23. **What is more important during the COVID-19 pandemic: ensuring the safety of the community by keeping violent, gun re-offenders incarcerated or releasing violent, gun-offenders to the community?**

    Response: I have presided over thousands of bond hearings as a municipal judge and state trial court judge. In every instance I have carefully applied the provisions of the South Carolina bond statutes to the facts of the case before me. Section 17-15-10 of the South Carolina Code of Laws requires me to consider the reasonable assurance that the accused will appear in court and does not present an unreasonable danger to the community. Public safety is one of the factors that I consider in every case.

    In evaluating if someone is a danger to the community, I perform an evidenced-based analysis, and look to their prior criminal record. I consider testimony from the victim and any other witnesses in the community. I also consider testimony offered on behalf of the defendant. In evaluating risk of flight, I consider residency, employment, family ties, and any other factors that would weigh upon one's ability to flee the jurisdiction. These factors are enumerated in S.C. Code Ann. § 17-15-30(A)-(B).

24. **What is implicit bias?**

Response: Over the course of my eleven and a half years as a state judge, I have not had the opportunity to research this issue and therefore I do not feel I have a sufficient basis for opining on the issue.

25. **Do you have any implicit biases? If so, what are they?**

Response: Please see my response to Question 24.

26. **Do you believe mandatory minimums should be abolished? Why or why not?**

Response: As a sitting judge and judicial nominee, it would be inappropriate for me to respond because this issue is for policymakers to consider.

27. **Do you believe that the federal government should decriminalize possession of any drugs?**

Response: As a sitting judge and judicial nominee, it would be inappropriate for me to respond because this issue is for policymakers to consider.

28. **During your selection process, did you talk with anyone from or anyone directly associated with the Raben Group or the Committee for a Fair Judiciary? If so, what was the nature of those discussions?**

Response: No.

29. **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.

30. **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: During a brief conversation at the beginning of the year with a classmate from law school, she mentioned to me that she belonged to the local chapter of the American Constitution Society and briefly explained the organization to me. That was my only conversation with her.

31. **During your selection process, did you talk with any officials from or anyone directly associated with Arabella Advisors, or did anyone do so on your behalf? If so, what was the nature of those discussions? Please include in this answer anyone**

associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, the Hopewell Fund, the Windward Fund, or any other such Arabella dark-money fund that is still shrouded.

Response: No.

32. **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.

33. **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.

34. **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.

35. **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: No.

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.

36. **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 Foundations 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.

37. **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.

38. **The Raben Group is "a national public affairs and strategic communications firm committed to making connections, solving problems, and inspiring change across the corporate, nonprofit, foundation, and government sectors." It manages the Committee for a Fair Judiciary.**

    a. **Has anyone associated with The Raben Group or the Committee for a Fair Judiciary requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

    Response: No.

    b. **Are you currently in contact with anyone associated with the Raben Group or the Committee for a Fair Judiciary, including but not limited to: Robert Raben, Jeremy Paris, Erika West, Elliot Williams, Nancy Zirkin, Rachel Motley, Steve Sereno, Dylan Tureff, or Joe Onek?**

    Response: No.

    c. **Have you ever been in contact with anyone associated with the Raben Group or the Committee for a Fair Judiciary, including but not limited to: Robert Raben, Jeremy Paris, Erika West, Elliot Williams, Nancy Zirkin, Rachel Motley, Steve Sereno, Dylan Tureff, or Joe Onek?**

    Response: No.

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

    Response: On January 25, 2022, I was contacted by Representative Jim Clyburn's office and was asked to forward my resume and documentation regarding my judicial experience. On June 23, 2022, I was contacted by an attorney from the White House Counsel's Office regarding my being recommended for a seat on the Court of Appeals for the Fourth Circuit. From that date, I have been in contact with attorneys from the White House Counsel's Office and the Office of Legal Policy at the Department of Justice. On August 9, 2022, the President announced his intent to nominate me.

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

    Response: I received the questions from the Office of Legal Policy on November 22, 2022. I worked diligently in answering these questions and questions from other Senators. My law clerks assisted me with checking case citations and formatting. I

received minor feedback from the Office of Legal Policy and finalized my answers for submission.

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

Questions for the Record for DeAndrea Gist Benjamin, nominated to be United States Circuit Judge for the Fourth Circuit

I. Directions

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

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

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

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

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

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

II. Questions

1. **Is racial discrimination wrong?**

Response: Yes. Congress has passed many anti-discrimination statutes that make racial discrimination illegal and the Supreme Court has held that policies or laws that involve classifications based on race are subject to strict scrutiny.

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

Response: The Supreme Court has held that the Due Process Clauses of 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," such that "neither liberty nor justice would exist if they were sacrificed." *Washington v. Glucksberg*, 521 U.S. 702, 720–721 (1997) (internal quotation marks omitted). I am unaware of any unenumerated rights in the Constitution that have not yet been articulated by the Supreme Court.

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

Response: I have served as a judge in various capacities since 2004. Over the course of my career I have handled thousands of cases and presided over hundreds of trials. Each trial required me to weigh evidence, rule on pre-trial and post-trial motions and determine the admissibility of testimony and evidence. I approach each case individually. I listen carefully to arguments by the parties, treat every litigant and counsel respectfully, conduct legal research and apply binding precedent to the facts of the specific case before me. If I am confirmed to the Fourth Circuit, I will approach each case individually with a keen focus on the record and an appreciation of the limited role of the appellate court and the deference given to the trial court, asking thoughtful questions during oral arguments, and following all Supreme Court and Fourth Circuit precedent.

I have also had the opportunity to sit on the South Carolina Supreme Court several times by designation; there too, I listened carefully to the arguments made by the parties, treated litigants and their counsel respectfully, conducted legal research, and discussed the cases with an open mind with the other Justices on the court in order to reach the best legal decision possible. I approached each case individually, gained a consensus with the Justices, and created binding precedent in my state. If I am confirmed to the Fourth Circuit, I will approach each case individually with a keen focus on the record and an appreciation of the limited role of the appellate court and the deference given to the trial court on questions of fact, I will approach discussions with my fellow circuit judges respectfully and with an open mind, and I will follow all Supreme Court and Fourth Circuit precedent.

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

Response: Black's Law Dictionary defines originalism as "the doctrine that words of a legal instrument are to be given the meanings they had when they were adopted; specif., the canon that a legal text should be interpreted through the historical ascertainment of the meaning that it would have conveyed to a fully informed observer at the time when the text first took effect." *Originalism* (11th ed. 2019).

Over the past eighteen years of service on the bench, I have not subscribed to any particular label. I have followed the judicial philosophy as outlined in Question 3. That approach, as well as following the methods of interpretation directed by the Supreme Court and the Fourth Circuit, will continue to be my practice if I am so fortunate to be confirmed to the Fourth Circuit.

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

Response: Black's Law Dictionary defines living constitutionalism as "the doctrine that the Constitution should be interpreted and applied in accordance with changing circumstances and, in particular, with changes in social values." *Living Constitutionalism* (11th ed. 2019).

Over the past eighteen years of service on the bench, I have not subscribed to any particular label. I have followed the judicial philosophy as outlined in Question 3. That approach, as well as following the methods of interpretation directed by the Supreme Court and the Fourth Circuit, will continue to be my practice if I am so fortunate to be confirmed to the Fourth Circuit.

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

Response: For any case that turned on the interpretation of a constitutional provision, I would start with the text. The Supreme Court has instructed that the original public meaning of the Constitution guides analysis in many areas, such as the Second Amendment, *see New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2126 (2022) ("the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation"), and the Confrontation Clause of the Sixth Amendment, *see Crawford v. Washington*, 541 U.S. 36, 60 (2004) ("the results of our decisions have generally been faithful to the original meaning of the Confrontation Clause"). If I am confirmed to the Fourth Circuit, I will apply the original public meaning of the Constitution where Supreme Court and Fourth Circuit precedent requires.

7. **Is the public's current understanding of the Constitution or of a statute ever**

relevant when determining the meaning of the Constitution or a statute? If so, when?

Response: Generally, no. However, I am aware that in certain circumstances such as in the first amendment context in *Miller v. California*, 413 U.S. 15 (1973), the Supreme Court has considered contemporary meaning in the context of understanding the definition of obscenity.

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

Response: No. I believe the Constitution is a fixed, enduring document that is capable of adapting to present situations and circumstances. It can only be amended as specified in Article V.

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

Response: Yes. The decision in *Dobbs v. Jackson Women's Health Organization* is binding and controlling precedent of the Supreme Court.

a. **Was it correctly decided?**

Response: As a sitting judge and judicial nominee for the Court of Appeals for the Fourth Circuit, it would be inappropriate for me to comment on the merits of Supreme Court precedent.

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

Response: Yes. The decision in *New York Rifle & Pistol Association v. Bruen* is binding and controlling precedent of the Supreme Court.

a. Was it correctly decided?

Response: As a sitting judge and judicial nominee for the Court of Appeals for the Fourth Circuit, it would be inappropriate for me to comment on the merits of Supreme Court precedent.

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

Response: Yes. The decision in *Brown v. Board of Education* is binding and controlling precedent of the Supreme Court.

a. **Was it correctly decided?**

Response: As a sitting judge and judicial nominee for the Court of Appeals for the Fourth Circuit, it would be inappropriate for me to comment on the merits of Supreme Court precedent. *Brown v. Board of Education* is an exception to this general practice in that this case is well-settled law and not likely to be challenged. Like other nominees, I will state that it was correctly decided.

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

Response: 18 U.S.C. § 3142(e)(2) establishes a rebuttable presumption in favor of pretrial detention for persons convicted of offenses described in § 3142(f)(1) which include offenses such as crimes of violence or an offense which carries a maximum term of 10 years imprisonment, offenses that carry a maximum term of life imprisonment or death, offenses where the sentence is more than ten years under the Controlled Substances Act, and any felony that is not otherwise violent but involves a minor child. The statute says that those persons should be presumptively detained if the person committed these particular offenses while on pretrial release and if the date of the conviction is not more than five years old or the person was released from imprisonment in the past five years, whichever is later. There is an additional presumption of pretrial detention under 18 U.S.C. § 3142(e)(3) if there is probable cause to believe the person committed certain offenses involving drugs where the maximum term of imprisonment is ten years, firearms, conspiracy, international terrorism, human trafficking, or other certain offenses involving minors.

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

Response: According to 18 U.S.C. § 3142, the presumption for pretrial detention arises when certain offenses suggest "no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community."

13. **Are there identifiable limits to what government may impose—or may require—of private institutions, whether it be a religious organization like Little Sisters of the Poor or small businesses operated by observant owners?**

Response: Yes.

A regulation or law violates the Free Exercise Clause and triggers strict scrutiny if it is not neutral and generally applicable. *See Emp. Div., Dep't of Hum. Res. of Oregon v. Smith*, 494 U.S. 872, 879. "Government fails to act neutrally when it proceeds in a manner intolerant of religious beliefs or restricts practices because of their religious nature." *Fulton v. City of Philadelphia, Pennsylvania*, 141 S. Ct. 1868, 1877 (2021). "A law is not generally applicable if it invites the government to consider the particular reasons for a person's conduct by providing a mechanism for individualized exemptions." *Id.* (internal quotation marks and brackets omitted). "A law also lacks general

applicability if it prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way." *Id.* "[W]henever [the government] treat[s] any comparable secular activity more favorably than religious exercise," strict scrutiny applies. *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021) (per curiam) (emphasis removed); see also *Roman Cath. Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63 (2020) (per curiam).

The ministerial exception doctrine states "whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of [the] church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them." *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171, 185-186 (quoting *Watson v. Jones*, 80 U.S. 679, 727 (1871)) (internal quotation marks omitted).

Additionally, acts of the federal government are subject to the Religious Freedom Restoration Act (RFRA), which provides that "[g]overnment shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability … [unless] it demonstrates that application of the burden to the person [ ] (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C.A. § 2000bb-1.

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

Response: State laws that discriminate on the basis of religion (meaning such laws are not neutrally and generally applicable) are subject to strict scrutiny. This means the government bears the burden of proving that the law is "justified by a compelling governmental interest and that it must be narrowly tailored to advance that interest." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531–532 (1993). Additionally, acts of the federal government are subject to the Religious Freedom Restoration Act (RFRA), which provides that "[g]overnment shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability … [unless] it demonstrates that application of the burden to the person [ ] (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C.A. § 2000bb-1.

15. **In *Roman Catholic Diocese of Brooklyn v. Cuomo*, the Roman Catholic Diocese of Brooklyn and two Orthodox Jewish synagogues sued to block enforcement of an executive order restricting capacity at worship services within certain zones, while certain secular businesses were permitted to remain open and subjected to different restrictions in those same zones. The religious organizations claimed that this order violated their First Amendment right to free exercise of religion. Explain the U.S. Supreme Court's holding on whether the religious entity-applicants were entitled to a preliminary injunction.**

Response: In *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63 (2020), the Supreme Court granted the religious entity-applicants an injunction. The Supreme Court found that "because the challenged restrictions are not neutral and of general applicability, they must satisfy strict scrutiny, and this means that they must be narrowly tailored to serve a compelling state interest." *Id.* at 67 (quoting *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993)) (internal quotation marks omitted). The regulations were not neutral or generally applicable "because they single[d] out houses of worship for especially harsh treatment." *Id.* at 66 (internal footnote citation omitted). The Supreme Court found that irreparable harm was shown because "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Id.* at 67 (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion)) (internal quotation marks omitted). The public interest prong was satisfied as "the State ha[d] not claimed that attendance at the applicants' services ha[d] resulted in the spread of the disease. And the State ha[d] not shown that public health would be imperiled if less restrictive measures were imposed." *Id.* at 68.

16. **Please explain the U.S. Supreme Court's holding and rationale in *Tandon v. Newsom*.**

Response: In *Tandon v. Newsom*, 141 S. Ct. 1294 (2021), the Supreme Court granted Plaintiff's injunction pending appeal of their case, alleging that California's COVID-19 restrictions unconstitutionally prevented them from gathering for at-home religious exercises. The Supreme Court held that "whenever [the government] treat[s] any comparable secular activity more favorably than religious exercise," strict scrutiny applies. *Id.* at 1296. The Supreme Court found that "California treat[ed] some comparable secular activities more favorably than at-home religious exercise," and "the State ha[d] not shown that public health would be imperiled by employing less restrictive measures." *Id*. at 1297 (quoting *Roman Cath. Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 68 (2020) (per curiam)) (internal quotation marks omitted). The Supreme Court reiterated that "[claimants] are irreparably harmed by the loss of free exercise rights for even minimal periods of time." *Id.* (internal quotation marks omitted).

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

Response: Yes.

18. **Explain your understanding of the U.S. Supreme Court's holding in *Masterpiece Cakeshop v. Colorado Civil Rights Commission*.**

Response: In *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2018), the Supreme Court held that the conduct of the Colorado Civil Rights Commission in assessing the Masterpiece Cakeshop owner's reasons for refusing to bake a custom wedding cake for the marriage of a same-sex couple violated the Free Exercise Clause of the First Amendment. The opinion noted that members of the Colorado Civil Rights Commission had expressed impermissible hostility toward religion and their

conduct was inconsistent with the First Amendment's guarantee that our laws be applied neutrally toward religion. *Id.* at 1729-1731.

19. **Under existing doctrine, are an individual's religious beliefs protected if they are contrary to the teaching of the faith tradition to which they belong?**

Response: Yes. An individual's sincerely held religious beliefs are protected by the Free Exercise Clause even if they are contrary to the teaching of that faith. The Supreme Court has previously held that courts can only inquire as to whether an individual's beliefs are sincerely held and not whether those beliefs match the tenets of any particular religious organization. *Frazee v. Ill. Dep't of Emp. Sec.*, 489 U.S. 829, 834–835 (1989).

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

Response: If I am confirmed to the Fourth Circuit and a case came before me on this issue, I would apply all applicable Supreme Court and Fourth Circuit precedent. An individual's sincerely held religious beliefs are protected by the Free Exercise Clause even if they are contrary to the teaching of that faith. The Supreme Court has previously held that courts can only inquire as to whether an individual's beliefs are sincerely held and not whether those beliefs match the tenets of any particular religious organization. *Frazee v. Ill. Dep't of Emp. Sec.*, 489 U.S. 829, 834–835 (1989). The Fourth Circuit has cautioned that "[i]t is not [the court's] place … to question the correctness or even the plausibility of [a claimant's] religious understandings." *U.S. Equal Emp. Opportunity Comm'n v. Consol Energy, Inc.*, 860 F.3d 131, 142 (4th Cir. 2017).

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

Response: If I am confirmed to the Fourth Circuit and a case came before me on this issue, I would apply all applicable Supreme Court and Fourth Circuit precedent. The Supreme Court has instructed that the "narrow function [of the courts] … is to determine whether the [religious belief] reflects an honest conviction." *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 725 (2014) (internal quotation marks omitted). The Fourth Circuit has cautioned that "[i]t is not [the court's] place … to question the correctness or even the plausibility of [a claimant's] religious understandings." *U.S. Equal Emp. Opportunity Comm'n v. Consol Energy, Inc.*, 860 F.3d 131, 142 (4th Cir. 2017).

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

Response: As a sitting judge and nominee for the Court of Appeals for the Fourth

Circuit, it would be inappropriate for me to opine on the official position of any religious organization.

20. **In *Our Lady of Guadalupe School v. Morrissey-Berru*, the U.S. Supreme Court reversed the Ninth Circuit and held that the First Amendment's Religion Clauses foreclose the adjudication of employment-discrimination claims for the Catholic school teachers in the case. Explain your understanding of the Court's holding and reasoning in the case.**

Response: *Our Lady of Guadalupe v. Morrissey-Berru*, 140 S. Ct. 2049 (2020), involved Catholic school teachers who sued their employer schools under the Americans with Disabilities Act and the Age Discrimination in Employment Act. The Supreme Court reaffirmed the First Amendment's protection of religious institutions to "decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine" under the so-called "ministerial exception." *Id*. at 2055 (internal quotation marks omitted). The Court held that both teachers' employment discrimination claims could not be adjudicated under the First Amendment's Religion Clauses. These constitutional requirements do not permit the government, including the courts, to get involved in matters of "faith and doctrine," including employment disputes affecting those who have certain "ministerial" positions within religious establishments. *Id*.

21. **In *Fulton v. City of Philadelphia*, the U.S. Supreme Court was asked to decide whether Philadelphia's refusal to contract with Catholic Social Services to provide foster care, unless it agrees to certify same-sex couples as foster parents, violates the Free Exercise Clause of the First Amendment. Explain the Court's holding in the case.**

Response: In *Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2021), the Supreme Court held that the City's decision not to refer foster children to Catholic Social Services, due to the agency's refusal to certify same-sex couples as foster parents, violated the Free Exercise Clause of the First Amendment. *Id.* at 1877. The Supreme Court found that the City's policy was not "generally applicable [because] it invite[d] the government to consider the particular reasons for a [organization's] conduct by providing a mechanism for individualized exemptions." *Id.* (internal quotation marks and brackets omitted). Because the City of Philadelphia could not demonstrate that it had a compelling interest in denying an exemption to Catholic Social Services, the policy could not survive strict scrutiny and violated the Free Exercise Clause.

22. **In *Carson v. Makin*, the U.S. Supreme Court struck down Maine's tuition assistance program because it discriminated against religious schools and thus undermined Mainers' Free Exercise rights. Explain your understanding of the Court's holding and reasoning in the case.**

Response: In *Carson v. Makin*, 142 S. Ct. 1987 (2022), the Supreme Court invalidated Maine's tuition assistance program because it violated the Free Exercise Clause of the First Amendment. Under that program, for school districts that do not operate their own

secondary schools, parents could designate a private secondary school they would like their children to attend, and the district would direct payments to participating private schools to help defray tuition costs. Because Maine limited tuition assistance payments to nonsectarian schools, the Supreme Court concluded that it discriminated against religion in violation of the Free Exercise Clause. *Id.* at 1997-1998.

23. **Please explain your understanding of the U.S. Supreme Court's holding and reasoning in *Kennedy v. Bremerton School District*.**

Response: In *Kennedy v. Bremerton School District*, 142 S. Ct. 2407 (2022), the Supreme Court held that the Free Speech Clause and Free Exercise Clauses protect an individual's right to engage in personal religious observance free from government reprisal during times when others are engaging in personal secular activities. *Id.* at 2425. The Supreme Court clarified that the *Lemon* test had been abandoned and that the district's concern with violating the Establishment Clause was unfounded. *Id.* at 2427-2428 ("[T]his Court has instructed that the Establishment Clause must be interpreted by reference to historical practices and understandings.") (internal quotation marks omitted).

24. **Explain your understanding of Justice Gorsuch's concurrence in the U.S. Supreme Court's decision to grant certiorari and vacate the lower court's decision in *Mast v. Fillmore County*.**

Response: In *Mast v. Fillmore County*, 141 S. Ct. 2430 (2021), Justice Gorsuch concurred to emphasize how the lower courts and county had misapprehended the demands of the Religious Land Use and Institutionalized Persons Act (RLUIPA) in a dispute between Fillmore County and an Amish community who resided in the county and had not installed modern septic systems to dispose of greywater pursuant to a county ordinance that required such systems. The Amish community believes that compliance with this county ordinance violated their religion and proposed alternatives to the county, which the county rejected. Justice Gorsuch wrote that application of the statute requires strict scrutiny and that the lower courts had erred by "treating the County's *general* interest in sanitation regulations as 'compelling' without reference to the *specific* application of those rules to *this* community." *Id*. at 2432. Justice Gorsuch further noted that exceptions had been given to other groups who hand-carry their greywater, such as campers, hunters, fishermen, and owners and renters of rustic cabins who are allowed to discharge it directly on the land. *Id*. Therefore, Justice Gorsuch concluded that "the County must offer a compelling explanation why the same flexibility extended to others cannot be extended to the Amish," and that it did not meet this burden when it rejected the Amish's proposed alternatives. *Id*.

25. **Some people claim that Title 18, Section 1507 of the U.S. Code should not be interpreted broadly so that it does not infringe upon a person's First Amendment right to peaceably assemble. How would you interpret the statute in the context of the protests in front the homes of U.S. Supreme Court Justices following the *Dobbs* leak?**

Response: 18 U.S.C. § 1507 applies to: "Whoever, with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty, pickets or parades in or near a building housing a court of the United States, or in or near a building or residence occupied or used by such judge, juror, witness, or court officer, or with such intent uses any sound-truck or similar device or resorts to any other demonstration in or near any such building or residence[.]"

As a sitting judge and judicial nominee for the Court of Appeals for the Fourth Circuit, it would be inappropriate for me to offer an opinion on this matter. If I am confirmed to the Fourth Circuit and an issue comes before me related to 18 U.S.C. § 1507, I would approach the case individually, carefully consider the facts in the record, and apply all applicable Supreme Court and Fourth Circuit precedent.

26. **Would it be appropriate for the court to provide its employees trainings which include the following:**

a. **One race or sex is inherently superior to another race or sex;**

Response: No.

b. **An individual, by virtue of his or her race or sex, is inherently racist, sexist, or oppressive;**

Response: No.

c. **An individual should be discriminated against or receive adverse treatment solely or partly because of his or her race or sex; or**

Response: No.

d. **Meritocracy or related values such as work ethic are racist or sexist?**

Response: No.

27. **Will you commit that your court, so far as you have a say, will not provide trainings that teach that meritocracy, or related values such as work ethic and self-reliance, are racist or sexist?**

Response: Yes.

28. **Will you commit that you will not engage in racial discrimination when selecting and hiring law clerks and other staff, should you be confirmed?**

Response: Yes.

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

Response: I am unaware of any cases regarding the constitutionality of considering skin color, sex, or any other factors when the President considers a person for a political appointment. If a case involving this issue came before me, I would do as I have always done when approaching cases. I would review the individual set of facts and apply the relevant and controlling law in coming to a decision.

30. **Is the criminal justice system systemically racist?**

Response: I have served as a judge since 2004, first on the municipal court and currently on the Fifth Judicial Circuit in South Carolina. In every case that I have presided over, I have endeavored to treat each litigant impartially and without bias and would continue to do so if confirmed to the Fourth Circuit. Questions about systemic issues in the federal judicial system are best left to policymakers.

31. **President Biden has created a commission to advise him on reforming the U.S. Supreme Court. Do you believe that Congress should increase, or decrease, the number of justices on the U.S. Supreme Court? Please explain.**

Response: As a sitting judge and judicial nominee, it would be inappropriate for me to respond because this issue is for policymakers to consider.

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

Response: No.

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

Response: The Supreme Court held in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111, that the Second Amendment "protect[s] the right of an ordinary, law-abiding citizen to possess a gun in the home for self-defense" and "an individual's right to carry a handgun for self-defense outside the home." *Id.* at 2122.

34. **What kinds of restrictions on the Right to Bear Arms do you understand to be prohibited by the U.S. Supreme Court's decisions in *United States v. Heller*, *McDonald v. Chicago*, and *New York State Rifle & Pistol Association v. Bruen*?**

Response: The Supreme Court has instructed that "the government must demonstrate that the regulation [or proposed legislation] is consistent with this Nation's historical tradition of firearm regulation." *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2126. If I am confirmed to the Fourth Circuit, I will apply all Supreme

Court and Fourth Circuit precedent governing the Second Amendment.

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

Response: Yes. The Supreme Court held "that the Second Amendment conferred an individual right to keep and bear arms" and "guarantee[s] the individual right to possess and carry weapons in case of confrontation." *D.C. v. Heller*, 554 U.S. 570, 595, 592 (2008).

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

Response: In *New York State Rifle & Pistol Association v. Bruen*, 142 S. Ct. 2111, the Supreme Court held that "the constitutional right to bear arms in public for self-defense is not a second class right, subject to an entirely different body of rules than the other Bill of Rights guarantees." *Id.* at 2156 (quoting *McDonald v. City of Chicago, Ill.*, 561 U.S. 742, 780 (2010)) (internal quotation marks omitted).

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

Response: In *New York State Rifle & Pistol Association v. Bruen*, 142 S. Ct. 2111, the Supreme Court held that "the constitutional right to bear arms in public for self-defense is not a second class right, subject to an entirely different body of rules than the other Bill of Rights guarantees." *Id.* at 2156 (quoting *McDonald v. City of Chicago, Ill.*, 561 U.S. 742, 780 (2010)) (internal quotation marks omitted).

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

Response: The Constitution, in what is known as the Take Care Clause, states that the President "shall take Care that the Laws be faithfully executed." U.S. Const. art. II, § 3.

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

Response: The Executive Branch has wide discretion to decide whether to prosecute an individual case. *See United States v. Nixon*, 418 U.S. 683, 693 (1974). If I am confirmed to the Fourth Circuit and a case involving this issue comes before me, I would faithfully apply all Supreme Court and Fourth Circuit precedent.

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

Response: No. The death penalty is permitted under federal law by 18 U.S.C. § 3591(a).

41. **Explain the U.S. Supreme Court's holding on the application to vacate stay in *Alabama Association of Realtors v. HHS.***

Response: The Supreme Court held in *Alabama Association of Realtors v. HHS*, 141 S. Ct. 2485 (2021), that the Center for Disease Control and Prevention (CDC) had exceeded its authority under section 361 of the Public Health Service Act (42 U.S. Code § 264) in issuing a nationwide moratorium on evicting tenants from residential rental properties in order to slow the spread of COVID-19. The Supreme Court found that this statute did not provide the CDC with the sweeping authority it claims it had and further held that if a federally imposed eviction moratorium is to continue, Congress must specifically authorize it.

42. **During your campaign to become a South Carolina Court of Appeals judge, opponents criticized your record and expressed concerns about your husband's politically powerful role. Your supporters responded to the criticism by calling it "systemic racism." For example, one of your supporters, State Representative Gilda Cobb-Hunter, said "Systemic racism is alive and well in these judicial races and everything else, and I just hate that she's having to pay the price"?**

a. **What is systemic racism?**

Response: Systemic discrimination is defined as "[a]n ingrained culture that perpetuates discriminatory policies and attitudes toward certain classes of people within society or a particular industry, profession, company, or geographic location." *Systemic Discrimination*, *Black's Law Dictionary* (11th ed. 2019). I have not presided over any cases as a judge regarding systemic issues or racial discrimination. As a private attorney, I was involved in cases where parties asserted a claim of racial discrimination.

b. **Do you agree or disagree with Rep. Gilda Cobb-Hunter's statement?**

Response: I fully respect the decision that was reached by the South Carolina General Assembly regarding my candidacy for that position. I am pleased to stand on my record of public service and my wide variety of legal experience in seeking confirmation for the position in which I am currently nominated.

c. **Do you believe you lost your campaign to join the South Carolina Court of Appeals because of systemic racism?**

Response: Please see my response to Question 42(b).

d. **Do you believe there is systemic racism in our judicial system?**

Response: I have served as a judge since 2004, first on the municipal court and currently on the Fifth Judicial Circuit in South Carolina. In every case that I have presided over, I have endeavored to treat each litigant impartially and without bias

and would continue to do so if confirmed to the Fourth Circuit. Questions about systemic issues in the federal judicial system are best left to policymakers.

e. **You said, "this race ended up being very polarized politically. There was a lot of propaganda out there against me that was not supported – I think that's what happened." What did you mean by "propaganda"?**

Response: Around the time of my Court of Appeals election, a PAC distributed materials about several judges, including myself. The materials alleged that I made thousands of dollars in political donations while a private attorney. This allegation was not true.

43. **Albertus Lewis came before you charged with murder. Specifically, he was accused of murdering his girlfriend, Myrna Sanchez, by shooting her in the head, and then disposed of her body by placing it in a wheelchair outside of a hospital. You granted his release on bond. You did this despite the fact that he had multiple prior arrests, and a history of resisting arrest and drug possession. Most striking, however, is how he had a history of failing to abide by court orders, as he previously had a failure to appear in court when granted pretrial release, and had violated a restraining order that prohibited him from having contact with the victim. After you released him, he committed another violent crime. He shot two police officers and, in the process, used a five-year-old child as a human shield.**

a. **Do you think those two officers would have been shot had Mr. Lewis had been held on murder charge?**

Response: As a sitting judge and judicial nominee for the Court of Appeals for the Fourth Circuit, Rule 501, Canon 2(A) of the South Carolina Appellate Court Rules, and Canon 3(A)(6) of the Code of Conduct for United States Judges, respectively, prevent me from commenting on issues that are pending or may come before the court. Out of an abundance of caution, I can only comment on what is a matter of public record.

When Mr. Lewis initially appeared before me on July 14, 2017, I denied his bond. On December 13, 2017, Mr. Lewis appeared before another judge for bond reconsideration. At that hearing, the presiding judge denied bond once again and ordered the State to produce discovery and set the matter for trial. At this time, the Solicitor's office controlled the criminal docket. A year later, on December 6, 2018, Mr. Lewis appeared before me again. At this point, the State had not tried the case and relayed to the Court that there was missing evidence. The State requested either denial of the bond or a high surety bond. Mr. Lewis alleged his speedy trial right had been violated. At this point, I granted Mr. Lewis a $150,000 bond. The State did not offer an explanation for why the case had not yet been tried but indicated to the Court that the case would be resolved by April 2019. However, the State continued to fail to prosecute Mr. Lewis. Mr. Lewis remained incarcerated and posted bond in July 2019, almost two years after his initial appearance. I have presided over

thousands of bond considerations and in every single case I have applied the U.S. Constitution, the South Carolina Constitution, and the South Carolina bond statutes.

b. **I previously asked you whether you regret your decision granting Mr. Lewis release from custody, and you refused to answer. I therefore ask again whether you regret your decision to release an accused murderer from custody, particularly one with a history of non-compliance?**

Response: Please see my response to Question 43(a). I would reiterate that at Mr. Lewis's initial appearance before me I denied bond. I granted bond approximately 18 months after his initial appearance when the State had failed to prosecute Mr. Lewis for the crimes described in your question.

44. **Is the remedy for a speedy trial violation a dismissal of the case, or is the remedy granting bond to the defendant? Please cite applicable United States Supreme Court and South Carolina Supreme Court precedent in your answer.**

Response: The United States Supreme Court has held that "[t]he sole remedy for a violation of the speedy trial right [is] dismissal of the charges." *Betterman v. Montana*, 578 U.S. 437, 444 (2016). The South Carolina Supreme Court has held "[t]he remedy for a speedy trial violation is dismissal of the charges." *State v. Hunsberger*, 418 S.C. 335, 342, 794 S.E.2d 368, 371 (2016) (quoting *State v. Langford*, 400 S.C. 421, 442, 735 S.E.2d 471, 482 (2012)). In the case of Mr. Lewis, when he appeared before me for the second time on December 6, 2018, I found that the State had violated a court order to try the case, that there was missing evidence in violation of Rule 5 of the South Carolina Rules of Criminal Procedure, and there were grave concerns regarding a potential violation of Mr. Lewis' Sixth Amendment right to a speedy trial.

45. **Did you or your husband discuss your interest for the Fourth Circuit vacancy with anyone from Rep. Clyburn's office before January 25, 2022?**

Response: No.

Senator Josh Hawley
Questions for the Record

DeAndrea Benjamin
Nominee, U.S. Court of Appeals for the Fourth Circuit

1. **Justice Marshall famously described his philosophy as "You do what you think is right and let the law catch up."**

    a. **Do you agree with that philosophy?**

    Response: No.

    b. **If not, do you think it is a violation of the judicial oath to hold that philosophy?**

    Response: I am not aware of the context of Justice Marshall's statement and his understanding of the judicial oath. If I am confirmed to the Fourth Circuit, I will adhere to the judicial oath by "adminster[ing[justice without respect to persons" and by acting "faithfully and impartially." 28 U.S.C. § 453.

2. **Do you believe that the Supreme Court's ruling in *Dobbs* v. *Jackson Women's Health Organization* is settled law?**

    Response: Yes. The decision in *Dobbs v. Jackson Women's Health Organization* is binding and controlling precedent of the Supreme Court.

3. **What is the standard for each kind of abstention in the court to which you have been nominated?**

    Response: Under *Pullman* abstention, "courts may abstain when the need to decide a federal constitutional question might be avoided if state courts are given the opportunity to construe ambiguous state law." *Martin v. Stewart*, 499 F.3d 360, 364 (4th Cir. 2007).

    Younger abstention applies when there are "(1) ongoing state criminal prosecutions, (2) certain civil enforcement proceedings that are akin to a criminal prosecution in important respects (commonly referred to as 'quasi-criminal' proceedings), and (3) pending civil proceedings involving certain orders ... uniquely in furtherance of the state courts' ability to perform their judicial functions." *Air Evac EMS, Inc. v. McVey*, 37 F.4th 89, 96 (4th Cir. 2022) (quoting *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 78–79, 81 (2013)) (internal quotation marks omitted).

Burford abstention applies "(1) when there are 'difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result in the case then at bar'; or (2) where the 'exercise of federal review of the question in a case and in similar cases would be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern.'" *Richmond, Fredericksburg & Potomac R. Co. v. Forst*, 4 F.3d 244, 253 (4th Cir. 1993) (quoting *New Orleans Pub. Serv., Inc. v. Council of City of New Orleans*, 491 U.S. 350, 361 (1989)).

Thibodaux abstention applies "in cases raising issues 'intimately involved with [the State's] sovereign prerogative,' where proper adjudication might be impaired by unsettled questions of state law." *Martin v. Stewart*, 499 F.3d 360, 364 (4th Cir. 2007).

"In assessing whether to abstain under *Colorado River*, 'the district court must first determine whether the state and federal proceedings are parallel. Suits are parallel if substantially the same parties litigate substantially the same issues in different forums.'" *Richmond, Fredericksburg & Potomac R. Co. v. Forst*, 4 F.3d 244, 254 (4th Cir. 1993) (quoting *New Beckley Min. Corp. v. Int'l Union, United Mine Workers of Am.*, 946 F.2d 1072, 1073 (4th Cir. 1991)).

"Under the *Rooker–Feldman* doctrine, lower federal courts are generally barred from not only considering issues actually presented to and decided by a state court, but also hearing constitutional claims that are 'inextricably intertwined with questions ruled upon by a state court, as when success on the federal claim depends upon a determination that the state court wrongly decided the issues before it.'" *Allstate Ins. Co. v. W. Virginia State Bar*, 233 F.3d 813, 816 (4th Cir. 2000) (quoting *Plyler v. Moore*, 129 F.3d 728, 731 (4th Cir. 1997)).

The ecclesiastical abstention doctrine states "whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of [the] church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them." *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171, 185-186 (quoting *Watson v. Jones*, 80 U.S. 679, 727 (1871)) (internal quotation marks omitted).

4. **Have you ever worked on a legal case or representation in which you opposed a party's religious liberty claim?**

   Response: No.

a. If so, please describe the nature of the representation and the extent of your involvement. Please also include citations or reference to the cases, as appropriate.

Response: Please see my response to Question 4.

5. What role should the original public meaning of the Constitution's text play in the courts' interpretation of its provisions?

Response: When considering the Constitution, I would start with the text. The Supreme Court has instructed that the original public meaning of the Constitution guides analysis in many areas, such as the Second Amendment, *see New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2126 (2022) ("the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation"), and the Confrontation Clause of the Sixth Amendment, *see Crawford v. Washington*, 541 U.S. 36, 60 (2004) ("the results of our decisions have generally been faithful to the original meaning of the Confrontation Clause"). If I am confirmed to the Fourth Circuit, I will apply the original public meaning of the Constitution where Supreme Court and Fourth Circuit precedent requires.

6. Do you consider legislative history when interpreting legal texts?

Response: The Supreme Court has used legislative history when the meaning of a statute is ambiguous but never when the meaning is clear.

a. If so, do you treat all legislative history the same or do you believe some legislative history is more probative of legislative intent than others?

Response: The Supreme Court has stated that some legislative history is more probative than others. *See Advoc. Health Care Network v. Stapleton*, 137 S. Ct. 1652, 1661 (2017) ["The legislative materials in these cases consist almost wholly of excerpts from committee hearings and scattered floor statements by individual lawmakers—the sort of stuff we have called 'among the least illuminating forms of legislative history.'" (quoting *N.L.R.B. v. SW General, Inc.*, 137 S. Ct. 929, 943 (2017))]; *United States v. Craft*, 535 U.S. 274, 287 (2002) ("[F]ailed legislative proposals are a particularly dangerous ground on which to rest an interpretation of a prior statute.") (internal quotation marks omitted).

b. When, if ever, is it appropriate to consult the laws of foreign nations when interpreting the provisions of the U.S. Constitution?

Response: Never – the Constitution is a domestic document.

7. **Under the precedents of the Supreme Court and U.S. Court of Appeals for the Circuit to which you have been nominated, what is the legal standard that applies to a claim that an execution protocol violates the Eighth Amendment's prohibition on cruel and unusual punishment?**

   Response: Under the *Baze-Glossip* test, a petitioner must show that the challenged execution method "presents a risk that is sure or very likely to cause serious illness and needless suffering, and give rise to sufficiently imminent dangers" by demonstrating "there [is] a substantial risk of serious harm" and the alternative method must be "feasible, readily implemented, and in fact significantly reduce[ ] a substantial risk of severe pain." *Glossip v. Gross*, 576 U.S. 863, 877 (2015) (quoting *Baze v. Rees*, 553 U.S. 35, 50, 52 (2008)) (internal quotation marks omitted).

8. **Under the Supreme Court's holding in *Glossip v. Gross*, 135 S. Ct. 824 (2015), is a petitioner required to establish the availability of a "known and available alternative method" that has a lower risk of pain in order to succeed on a claim against an execution protocol under the Eighth Amendment?**

   Response: Yes.

9. **Has the Supreme Court or the U.S. Court of Appeals for the Circuit to which you have been nominated ever recognized a constitutional right to DNA analysis for habeas corpus petitioners in order to prove their innocence of their convicted crime?**

   Response: No.

10. **Do you have any doubt about your ability to consider cases in which the government seeks the death penalty, or habeas corpus petitions for relief from a sentence of death, fairly and objectively?**

    Response: No.

11. **Under Supreme Court and U.S. Court of Appeals for the Circuit to which you have been nominated, what is the legal standard used to evaluate a claim that a facially neutral state governmental action is a substantial burden on the free exercise of religion? Please cite any cases you believe would be binding precedent.**

    Response: A regulation or law that is neutral and generally applicable does not generally violate the Free Exercise Clause and trigger strict scrutiny. *See Emp. Div., Dep't of Hum. Res. of Oregon v. Smith*, 494 U.S. 872, 879 (1990). "Government fails to act neutrally when it proceeds in a manner intolerant of religious beliefs or restricts practices because

of their religious nature." *Fulton v. City of Philadelphia, Pennsylvania*, 141 S. Ct. 1868, 1877 (2021). "A law is not generally applicable if it invites the government to consider the particular reasons for a person's conduct by providing a mechanism for individualized exemptions." *Id.* (internal quotation marks and brackets omitted). "A law also lacks general applicability if it prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way." *Id*. "[W]henever [the government] treat[s] any comparable secular activity more favorably than religious exercise," strict scrutiny applies. *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021) (per curiam) (emphasis removed); *see also Roman Cath. Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63 (2020) (per curiam).

12. Under Supreme Court and U.S. Court of Appeals for the Circuit to which you have been nominated, what is the legal standard used to evaluate a claim that a state governmental action discriminates against a religious group or religious belief? Please cite any cases you believe would be binding precedent.

Response: Please see my response to Question 11.

13. What is the standard in the U.S. Court of Appeals for the Circuit to which you have been nominated for evaluating whether a person's religious belief is held sincerely?

Response: The Supreme Court has instructed that the "narrow function [of the courts] … is to determine whether the [religious belief] reflects an honest conviction." *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 725 (2014) (internal quotation marks omitted). The Fourth Circuit has cautioned that "[i]t is not [the court's] place … to question the correctness or even the plausibility of [a claimant's] religious understandings." *U.S. Equal Emp. Opportunity Comm'n v. Consol Energy, Inc.*, 860 F.3d 131, 142 (4th Cir. 2017).

14. The Second Amendment provides that, "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

a. What is your understanding of the Supreme Court's holding in *District of Columbia v. Heller*, 554 U.S. 570 (2008)?

Response: The Supreme Court held "that the Second Amendment conferred an individual right to keep and bear arms" and "guarantee[s] the individual right to possess and carry weapons in case of confrontation." *D.C. v. Heller*, 554 U.S. 570, 595, 592 (2008).

b. Have you ever issued a judicial opinion, order, or other decision adjudicating a claim under the Second Amendment or any analogous state law? If yes, please provide citations to or copies of those decisions.

Response: No.

15. Dissenting in *Lochner v. New York*, Justice Oliver Wendell Holmes, Jr. wrote that, "The 14th Amendment does not enact Mr. Herbert Spencer's Social Statics." 198 U.S. 45, 75 (1905).

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

Response: It appears that Justice Holmes noted that the "Constitution is not intended to embody a particular economic theory." *Lochner*, 198 U.S. 45, 75 (1905).

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

Response: *Lochner* was largely abrogated by *West Coast Hotel v. Parrish*, 300 U.S. 379 (1937). If I am confirmed, I will follow all relevant Supreme Court and Fourth Circuit precedent on the issues before me.

16. Are there any Supreme Court opinions that have not been formally overruled by the Supreme Court that you believe are no longer good law?

a. If so, what are they?

Response: Only the Supreme Court may overrule one of its prior cases as to the interpretation of the Constitution. If I am confirmed to the Fourth Circuit, I will follow all Supreme Court and Fourth Circuit precedent.

b. With those exceptions noted, do you commit to faithfully applying all other Supreme Court precedents as decided?

Response: I commit to faithfully apply all Supreme Court precedent.

17. Judge Learned Hand famously said 90% of market share "is enough to constitute a monopoly; it is doubtful whether sixty or sixty-four percent would be enough; and certainly thirty-three per cent is not." *United States v. Aluminum Co. of America*, 148 F.2d 416, 424 (2d Cir. 1945).

a. Do you agree with Judge Learned Hand?

Response: Whether or not I personally agree with Judge Hand would be of no importance if I was confirmed to the Fourth Circuit. If confirmed, I would apply Fourth Circuit and Supreme Court precedent to the cases that came before me including cases alleging violations of the Sherman Act.

If not, please explain why you disagree with Judge Learned Hand.

Response: Please see my response to Question 17a.

b. What, in your understanding, is in the minimum percentage of market share for a company to constitute a monopoly? Please provide a numerical answer or appropriate legal citation.

Response: The Supreme Court has instructed that control of "80% to 95% of the service market, with no readily available substitutes, is, [] sufficient to survive summary judgment under the more stringent monopoly standard of § 2" of the Sherman Act. *Eastman Kodak Co. v. Image Tech. Servs., Inc.*, 504 U.S. 451, 481 (1992).

18. Please describe your understanding of the "federal common law."

Response: The Supreme Court has held that "there is no federal general common law" but that "limited areas exist in which federal judges may appropriately craft the rule of decision." *Rodriguez v. Fed. Deposit Ins. Corp.*, 140 S. Ct. 713, 717 (2020) (internal quotation marks omitted).

19. If a state constitution contains a provision protecting a civil right and is phrased identically with a provision in the federal constitution, how would you determine the scope of the state constitutional right?

Response: When interpreting a state constitutional provision, a federal court must follow interpretation of the provision issued by the highest court of the relevant state. *See Rhodes v. E.I. du Pont de Nemours & Co.*, 636 F.3d 88, 96 (4th Cir. 2011) ("A federal court acting under its diversity jurisdiction should respond conservatively when asked to discern governing principles of state law."); *see generally Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938).

a. Do you believe that identical texts should be interpreted identically?

Response: Please see my response to Question 19.

b. Do you believe that the federal provision provides a floor but that the state provision provides greater protections?

Response: Generally, yes. Article VI, Clause 2 of the United States Constitution provides that "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof … shall be the supreme Law of the Land."

20. Do you believe that *Brown v. Board of Education*, 347 U.S. 483 (1954) was correctly decided?

Response: As a sitting judge and judicial nominee for the Court of Appeals for the Fourth Circuit, it would be inappropriate for me to comment on the merits of Supreme Court precedent. *Brown v. Board of Education* is an exception to this general practice in that this case is well-settled law and not likely to be challenged. Like other nominees, I will state that it was correctly decided.

21. Do federal courts have the legal authority to issue nationwide injunctions?

Response: Federal Rule of Civil Procedure 65 governs injunctions. The Supreme Court has upheld nationwide injunctions in certain circumstances. *See, e.g.*, *Trump v. Int'l Refugee Assistance Project*, 137 S. Ct. 2080, 2088-2089 (2017); *see also Richmond Tenants Org., Inc. v. Kemp*, 956 F.2d 1300, 1308 (4th Cir. 1992). If confirmed and faced with the question of whether a nationwide injunction was properly issued, I will follow applicable Supreme Court and Fourth Circuit precedent.

a. If so, what is the source of that authority?

Response: See my response to Question 21.

b. In what circumstances, if any, is it appropriate for courts to exercise this authority?

Response: As a sitting judge and judicial nominee for the Court of Appeals for the Fourth Circuit, Rule 501, Canon 2(A) of the South Carolina Appellate Court Rules, and Canon 3(A)(6) of the Code of Conduct for United States Judges, respectively, prevent me from commenting on issues that are pending or may come before the court. If I am confirmed to the Fourth Circuit and an issue came before me related to a nationwide injunction, I would approach the case individually, carefully consider the facts in the record, and apply all applicable Supreme Court and Fourth Circuit precedent.

22. 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?

Response: As a sitting judge and judicial nominee for the Court of Appeals for the Fourth Circuit, Rule 501, Canon 2(A) of the South Carolina Appellate Court Rules, and Canon 3(A)(6) of the Code of Conduct for United States Judges, respectively, prevent me from commenting on issues that are pending or may come before the court. If I am confirmed to the Fourth Circuit and an issue came before me related to a nationwide injunction, I would approach the case individually, carefully consider the facts in the record, and apply all applicable Supreme Court and Fourth Circuit precedent.

23. What is your understanding of the role of federalism in our constitutional system?

Response: The Supreme Court has provided that "the Constitution divides authority between federal and state governments for the protection of individuals … federalism secures to citizens the liberties that derive from the diffusion of sovereign power. Just as the separation and independence of the coordinate branches of the Federal Government serves to prevent the accumulation of excessive power in any one branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front." *New York v. United States*, 505 U.S. 144, 181 (1992) (internal quotation marks omitted).

24. Under what circumstances should a federal court abstain from resolving a pending legal question in deference to adjudication by a state court?

Response: Please see my response to Question 3.

25. What in your view are the relative advantages and disadvantages of awarding damages versus injunctive relief?

Response: As a sitting judge and judicial nominee for the Court of Appeals for the Fourth Circuit, Rule 501, Canon 2(A) of the South Carolina Appellate Court Rules, and Canon 3(A)(6) of the Code of Conduct for United States Judges, respectively, prevent me from commenting on issues that are pending or may come before the court. If I am confirmed to the Fourth Circuit and an issue came before me related to damages or injunctive relief, I would approach the case individually, carefully consider the facts in the record, ask thoughtful questions of counsel, and apply all applicable Supreme Court and Fourth Circuit precedent.

26. What is your understanding of the Supreme Court's precedents on substantive due process?

Response: The Supreme Court restated in *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022), that the Fourteenth Amendment "has been held to guarantee some rights that are not mentioned in the Constitution, but any such right must be 'deeply rooted in this Nation's history and tradition' and 'implicit in the concept of ordered liberty.'" *Id.* at 2242 (quoting *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997))

27. The First Amendment provides "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

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

Response: A regulation or law that is neutral and generally applicable does not generally violate the Free Exercise Clause and trigger strict scrutiny. *See Emp. Div., Dep't of Hum. Res. of Oregon v. Smith*, 494 U.S. 872, 879 (1990). "Government fails to act neutrally when it proceeds in a manner intolerant of religious beliefs or restricts practices because of their religious nature." *Fulton v. City of Philadelphia, Pennsylvania*, 141 S. Ct. 1868, 1877 (2021). "A law is not generally applicable if it invites the government to consider the particular reasons for a person's conduct by providing a mechanism for individualized exemptions." *Id.* (internal quotation marks and brackets omitted). "A law also lacks general applicability if it prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way." *Id*. "[W]henever [the government] treat[s] any comparable secular activity more favorably than religious exercise," strict scrutiny applies. *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021) (per curiam) (emphasis removed); *see also Roman Cath. Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63 (2020) (per curiam).

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

Response: No – the Free Exercise Clause also protects against the "impos[ition of] special disabilities on the basis of ... religious status." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 533

(1993) (quoting *Employment Div., Dept. of Human Resources of Ore. v. Smith*, 494 U.S. 872, 877 (1990)) (internal quotation marks omitted).

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

Response: The Religious Freedom Restoration Act prohibits the government from substantially burdening a person's "exercise of religion even if the burden results from a rule of general applicability[.]" 42 U.S.C. § 2000bb-1(a). Government bears the burden of showing that a law has a compelling government interest and that its actions are narrowly tailored or the least restrictive means. Once a case or controversy is brought challenging such alleged burden, the court can decide whether a law substantially burdens the exercise of religion. *See Burwell v. Hobby Lobby Stores, Inc*., 573 U.S. 682, 719 (2014).

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

Response: The Supreme Court has instructed that the "narrow function [of the courts] … is to determine whether the [religious belief] reflects an honest conviction." *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 725 (2014) (internal quotation marks omitted). The Fourth Circuit has cautioned that "[i]t is not [the court's] place … to question the correctness or even the plausibility of [a claimant's] religious understandings." *U.S. Equal Emp. Opportunity Comm'n v. Consol Energy, Inc.*, 860 F.3d 131, 142 (4th Cir. 2017).

e. 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?

Response: The Supreme Court has instructed that the Religious Freedom Restoration Act "prohibits the federal government from substantially burdening a person's exercise of religion unless it demonstrates that doing so both furthers a compelling governmental interest and represents the least restrictive means of furthering that interest. Because RFRA operates as a kind of super statute, displacing the normal operation of other federal laws, it might supersede Title VII's commands in appropriate cases." *Bostock v. Clayton Cnty., Georgia*, 140 S. Ct. 1731, 1754 (2020).

f. Have you ever issued a judicial opinion, order, or other decision adjudicating a claim under the Religious Freedom Restoration Act, the Religious Land use and Institutionalized Person Act, the Establishment

Clause, the Free Exercise Clause, or any analogous state law? If yes, please provide citations to or copies of those decisions.

Response: The Religious Freedom Restoration Act prohibits the government from substantially burdening a person's "exercise of religion even if the burden results from a rule of general applicability[.]" 42 U.S.C. § 2000bb-1(a). If a case came before me related to this issue I would carefully apply Supreme Court and Fourth Circuit precedent.

28. Justice Scalia said, "The judge who always likes the result he reaches is a bad judge."

a. What do you understand this statement to mean?

Response: While I am not familiar with Justice Scalia's statement, I believe he was stating that judges should not decide cases based on personal views or desired outcomes.

29. Have you ever taken the position in litigation or a publication that a federal or state statute was unconstitutional?

Response: No.

a. If yes, please provide appropriate citations.

Response: Please see my response to Question 29.

30. Since you were first contacted about being under consideration for this nomination, have you deleted or attempted to delete any content from your social media? If so, please produce copies of the originals.

Response: No.

31. Do you believe America is a systemically racist country?

Response: Growing up in the South, I am aware of the challenges that our country has faced in the past. My grandparents and parents grew up in a segregated America and attended segregated schools. For them to have the opportunity to see their daughter and granddaughter as a nominee to the Fourth Circuit makes them proud of not only me but also thankful for the real promise of the American Dream. My nomination is an example that with education, hard work, dedication, and determination, you can be anything you want to be in this great nation.

32. Have you ever taken a position in litigation that conflicted with your personal views?

Response: Yes.

33. How did you handle the situation?

Response: I upheld my duty to act in the best interest of my client.

34. If confirmed, do you commit to applying the law written, regardless of your personal beliefs concerning the policies embodied in legislation?

Response: Yes.

35. Which of the Federalist Papers has most shaped your views of the law?

Response: There is not one individual Federalist Paper that has most shaped my views of the law.

36. Do you believe that an unborn child is a human being?

Response: In *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022), the Supreme Court declined to answer the question of when human life begins.

37. Other than at your hearing before the Senate Judiciary Committee, have you ever testified under oath? Under what circumstances? If this testimony is available online or as a record, please include the reference below or as an attachment.

Response: Yes.

On November 16, 2020, I testified before the South Carolina General Assembly's Judicial Merit Selection Commission for election to be a judge on the South Carolina Court of Appeals. On November 12, 2018, I testified before the South Carolina General Assembly's Judicial Merit Selection Commission for re-election as a resident judge for the Fifth Judicial Circuit. On November 27, 2012, I testified before the South Carolina General Assembly's Judicial Merit Selection Commission for re-election as a resident judge for the Fifth Judicial Circuit. On November 16, 2010, I testified before the South Carolina General Assembly's Judicial Merit Selection Commission for election to be a resident judge for the Fifth Judicial Circuit. On November 3, 2009, I testified before the South Carolina General Assembly's Judicial

Merit Selection Commission for election to be a judge for the Fifth Judicial Circuit Family Court.

Copies of the documents I submitted to the South Carolina General Assembly's Judicial Merit Selection Commission for each of the dates listed above were previously supplied to the Senate as attachments to my Senate Judiciary Questionnaire.

38. In the course of considering your candidacy for this position, has anyone at the White House or Department of Justice asked for you to provide your views on:

a. *Roe v. Wade,* 410 U.S. 113 (1973)?

Response: No.

b. The Supreme Court's substantive due process precedents?

Response: No.

c. Systemic racism?

Response: No.

d. Critical race theory?

Response: No.

39. Do you currently hold any shares in the following companies:

a. Apple?

Response: No. I have investments in mutual funds that hold stocks but am not aware of the specific securities held in those funds.

b. Amazon?

Response: No. I have investments in mutual funds that hold stocks but am not aware of the specific securities held in those funds.

c. Google?

Response: No. I have investments in mutual funds that hold stocks but am not aware of the specific securities held in those funds.

d. Facebook?

Response: No. I have investments in mutual funds that hold stocks but am not aware of the specific securities held in those funds.

e. Twitter?

Response: No. I have investments in mutual funds that hold stocks but am not aware of the specific securities held in those funds.

40. Have you ever authored or edited a brief that was filed in court without your name on the brief?

Response: No.

a. If so, please identify those cases with appropriate citation.

Response: Please see my response to Question 40.

41. Have you ever confessed error to a court?

Response: No.

a. If so, please describe the circumstances.

Response: Please see my response to Question 41.

42. Please describe your understanding of the duty of candor, if any, that nominees have to state their views on their judicial philosophy and be forthcoming when testifying before the Senate Judiciary Committee. *See* U.S. Const. art. II, § 2, cl. 2.

Response: My understanding of the duty of candor is that I have a duty to answer all questions truthfully in connection with my nomination to the United States Court of Appeals for the Fourth Circuit.

Questions from Senator Thom Tillis
for DeAndrea Gist Benjamin
Nominee to be United States Circuit Judge for the Fourth Circuit

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: Judicial activism is when a judge allows their personal opinion or beliefs to affect their decisionmaking. Judicial activism is never appropriate.

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

   Response: Impartiality is an expectation for a judge. Canon 2 of the Code of Conduct for United States Judges expressly requires a judge to "respect and comply with the law and [] act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

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: Yes. It is a judge's duty to apply the law to the facts of the case before them.

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: If confirmed, I would faithfully apply the Supreme Court's decisions in *New York State Rifle & Pistol Association v. Bruen*, 142 S. Ct. 2111 (2022), *McDonald v. City of Chicago*, 561 U.S. 742 (2010), and *District of Columbia v. Heller*, 554 U.S. 570 (2008).

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: The Supreme Court has instructed that "the government must demonstrate that the regulation [or proposed legislation] is consistent with this Nation's historical tradition of firearm regulation." *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2126 (2022). If I am confirmed to the Fourth Circuit, I will apply all Supreme Court and Fourth Circuit precedent governing the Second Amendment.

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: The Supreme Court has held that "[q]ualified immunity attaches when an official's conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. A right is clearly established when it is sufficiently clear that every reasonable official would have understood that what he is doing violates that right." *Rivas-Villegas v. Cortesluna*, 142 S. Ct. 4, 7 (2021) (per curiam) (internal quotation marks omitted).

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

Response: As a sitting judge and judicial nominee, it would be inappropriate for me to provide an opinion on the sufficiency of qualified immunity protections for law enforcement officers. If I am confirmed to the Fourth Circuit and an issue came before me related to qualified immunity, I would approach the case individually, carefully consider the facts in the record, and apply all applicable Supreme Court and Fourth Circuit precedent.

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

Response: The Supreme Court has held that "[q]ualified immunity attaches when an official's conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. A right is clearly established when it is sufficiently clear that every reasonable official would have understood that what he is doing violates that right." *Rivas-Villegas v. Cortesluna*, 142 S. Ct. 4, 7 (2021) (per curiam) (internal quotation marks omitted). If I am confirmed to the Fourth Circuit and an issue came before me related to qualified immunity, I would approach the case individually, carefully consider the facts in the record, and apply all applicable Supreme Court and Fourth Circuit precedent.

12. **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: None.

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: I have addressed the First Amendment and free speech in *State v. Grant*, 2021A4011000008 (Sept 12, 2012). I have no experience with free speech and intellectual property issues, including copyright.

13. **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: I would review if Supreme Court or Fourth Circuit precedent addresses the meaning of the particular statute. If the statute was a matter of first impression, I would begin with the text of the statute — statutory terms should be given their ordinary meaning and if the meaning is clear, then the analysis stops. If the meaning were ambiguous, I would then rely on principles of statutory construction and persuasive authority from other circuits and district courts interpreting the same or similar statutes. The Supreme Court has used legislative history when the meaning of a statute is ambiguous but never when the meaning is clear. The Supreme Court

has stated that some legislative history is more probative than others. *See Advoc. Health Care Network v. Stapleton*, 137 S. Ct. 1652, 1661 (2017) ["The legislative materials in these cases consist almost wholly of excerpts from committee hearings and scattered floor statements by individual lawmakers—the sort of stuff we have called 'among the least illuminating forms of legislative history.'" (quoting *N.L.R.B. v. SW General, Inc.*, 137 S. Ct. 929, 943 (2017))]; *United States v. Craft*, 535 U.S. 274, 287 (2002) ("[F]ailed legislative proposals are a particularly dangerous ground on which to rest an interpretation of a prior statute.") (internal quotation marks omitted).

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: In evaluating the role of an expert federal agency, I would determine the jurisdiction and authority of the agency by looking to the enabling statute, I would apply any relevant provisions of the Administrative Procedure Act, I would follow the applicable doctrines of the Supreme Court governing deference to agencies, such as *Chevron*, if the agency is interpreting a statute or regulation, and I would research relevant Supreme Court and Fourth Circuit precedent on the issue before me.

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 a sitting judge and judicial nominee for the Court of Appeals for the Fourth Circuit, Rule 501, Canon 2(A) of the South Carolina Appellate Court Rules, and Canon 3(A)(6) of the Code of Conduct for United States Judges, respectively, prevent me from commenting on issues that are pending or may come before the court. If I am confirmed to the Fourth Circuit and an issue came before me related to copyright infringement, I would approach the case individually, carefully consider the facts in the record, and apply all applicable Supreme Court and Fourth Circuit precedent.

14. **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: Over the course of my eleven and a half years as a state trial judge, I have not had the opportunity to research the DMCA or similar laws and therefore I do not feel I have a sufficient basis for opining on the best practices in evaluating these cases. If I am confirmed to the Fourth Circuit and an issue came before me related to

the current digital environment, the DMCA, or similar laws, I would approach the case individually, carefully consider the facts in the record, and apply all applicable Supreme Court and Fourth Circuit precedent.

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: Over the course of my eleven and a half years as a state trial judge, I have regularly applied the law to contemporary facts, regardless of when the law was written. If I am confirmed to the Fourth Circuit and an issue came before me related to the current technological landscape, I would approach the case individually, carefully consider the facts in the record, and apply all applicable Supreme Court and Fourth Circuit precedent.

15. **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. I have expressed concerns about the fact that nearly one quarter of all 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: Judge shopping and forum shopping are inappropriate.

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

Response: Yes. All judges should ensure equal access to the courts and equal justice under law.

c. **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: No.

16. **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: Over the course of my eleven and a half years as a state trial judge, I have not had the opportunity to research this issue and therefore I do not feel I have a sufficient basis for

opining on the issue. All judges should ensure equal access to the courts and equal justice under law.

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: Over the course of my eleven and a half years as a state trial judge, I have not had the opportunity to research this issue and therefore I do not feel I have a sufficient basis for opining on the issue. All judges should ensure equal access to the courts and equal justice under law.

b. **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? Should such a rule apply only where a single judge sits in a division?**

Response: Over the course of my eleven and a half years as a state trial judge, I have not had the opportunity to research this issue and therefore I do not feel I have a sufficient basis for opining on the issue. All judges should ensure equal access to the courts and equal justice under law.

17. **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 judge and judicial nominee for the Court of Appeals for the Fourth Circuit, Rule 501, Canon 2(A) of the South Carolina Appellate Court Rules, and Canon 3(A)(6) of the Code of Conduct for United States Judges, respectively, prevent me from commenting on issues that are pending or may come before the court. If I am confirmed to the Fourth Circuit and an issue came before me related to mandamus, I would approach the case individually, carefully consider the facts in the record, ask thoughtful questions of counsel, and apply all applicable Supreme Court and Fourth Circuit precedent.

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

Response: As a sitting judge and judicial nominee for the Court of Appeals for the Fourth Circuit, Rule 501, Canon 2(A) of the South Carolina Appellate Court Rules, and Canon 3(A)(6) of the Code of Conduct for United States Judges, respectively, prevent me from commenting on issues that are pending or may come before the court. If I am confirmed to the Fourth Circuit and an issue came before me related to mandamus, I would approach the case individually, carefully consider the facts in the record, ask thoughtful questions, and apply all applicable Supreme Court and Fourth Circuit precedent.