Senator Chuck Grassley, Ranking Member
Questions for the Record
Judge Jeffery Paul Hopkins
Judicial Nominee to the United States District Court for the Southern District of Ohio

1. **Under what circumstances can federal judges add to the list of fundamental rights the Constitution protects?**

   Response: In determining whether an unenumerated right is a constitutionally protected one, the Supreme Court has considered whether the right was "deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed." *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997) (internal quotation marks omitted).

2. **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: As a sitting bankruptcy judge, my personal views are irrelevant to the cases that come before me. If I am so fortunate to be elevated from the Bankruptcy Court to the United States District Court for the Southern District of Ohio, my personal views will continue to be irrelevant. As I have for the past 26 years, I am firmly committed to following the precedent established by the Supreme Court and the Sixth Circuit when ruling on any matters that arise under the Constitution.

3. **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 do not have any personal knowledge of this statement and am unable to comment on the remarks made by Judge Reinhardt. As previously stated, I am firmly committed to following the precedent established by the Supreme Court and the Sixth Circuit when ruling on any matters that arise under the Constitution and statutes enacted by Congress.

4. **Please define the term "living constitution."**

   Response: "Living constitution" has been defined as "[a] constitution whose interpretation and application can vary over time according to changing circumstances and changing social values." Living Constitution, Black's Law Dictionary (11th ed. 2019).

5. **Do you think that election integrity is a problem in this country? Please explain.**

   Response: I have served for the past 26 years as a United States Bankruptcy Court judge, including seven years as Chief Judge. I have not had a case or controversy before me that has involved election integrity. Any personal or political views I may have on this topic are irrelevant to my judicial decision making. I will decide any individual case or controversy that I may have jurisdiction over based on the facts and the law presented including any precedent from the Supreme Court and Sixth Circuit.

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

   Response: I am unfamiliar with Justice Ketanji Brown Jackson's statement or the context in which it was expressed. Our Constitution is an enduring document that has withstood the test of time. I have never characterized myself as a living constitutionalist or ascribed to any other method of statutory interpretation. If confirmed as a district court judge, I would faithfully apply all binding Supreme Court and Sixth Circuit precedent and will use the methods of statutory interpretation that such precedent dictates.

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

   Response: The Supreme Court's decision in *Daubert v. Merrell Dow*, 509 U.S. 579 (1993), exemplifies my judicial philosophy. The *Daubert* standard assists trial courts with determining whether an expert witness's testimony during trial should be admitted into evidence. In my 26 years of service as a federal trial judge, expert witness testimony has played a vital role in determining whether the ends of justice are served. If I am fortunate enough to be confirmed by the Senate, I will consistently apply the *Daubert* standard in deciding both criminal and civil trials so that the rule of law prevails.

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

   Response: One case decided by the Sixth Circuit that exemplifies my judicial philosophy is *Reinhardt v. Vanderbilt Mortg. & Fin*., *Inc*. (*In re Reinhardt*), 563 F.3d 558 (6th Cir. 2009). *Reinhardt* was a case I presided over that presented an issue of first impression. After rendering my decision, I certified the case for direct appeal to the Sixth Circuit pursuant to 28 U.S.C. § 158(d). The case involved the question of whether the secured creditor's rights on the debtors' mobile home could be modified under the Bankruptcy Abuse and Consumer Protection Act of 2005, which was newly enacted at that time. On appeal, the Sixth Circuit held that "the bankruptcy court's order confirming [the] Debtors' reorganization plan is AFFIRMED," premised on my careful analysis of Ohio law as it related to the newly enacted provisions of bankruptcy law. *Reinhardt*, 563 F.3d at 565.

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

   Response: I have served for the past 26 years as a United States Bankruptcy Court judge, including seven years as Chief Judge. I have not had a case or controversy before me that has involved reallocation of funds away from police departments to other support services. Decisions on appropriating funds for police and social services rest with legislative bodies, and not with the courts. Any personal or political views I may have on this issue would not affect my obligation to follow the laws enacted by legislative bodies to appropriate funds for police departments or other support services.

10. **Is the right to petition the government a constitutionally protected right?**

    Response: Yes; the First Amendment includes the right to "to petition the Government for a redress of grievances."

11. **What role should empathy play in sentencing defendants?**

    Response: None. The factors to consider in sentencing defendants are set forth in 18 U.S.C. § 3553(a) and in the Sentencing Guidelines, and a judge's personal experiences have no bearing.

12. **Please discuss your criminal legal experience, including the number of felony cases that you have personally handled, how many misdemeanor cases you have personally handled, and how many times you have argued before the court in a criminal matter.**

    Response: I have served as a United States Bankruptcy Court judge for the past 26 years, including seven years as Chief Judge. Before this, for more than eleven years, I practiced civil law in both the private sector and as an Assistant United States Attorney, and I served as a law clerk for the Ohio Tenth District Court of Appeals and United States Court of Appeals for the Sixth Circuit where criminal law issues frequently arose. I do not have criminal law trial experience. I am, however, confident in my ability to quickly familiarize myself with the provisions of Title 18, the Federal Rules of Criminal Procedure, and other criminal statutory authorities, and to apply these statutes and rules consistent with Sixth Circuit and Supreme Court precedent if I am confirmed to serve as a district judge.

13. **Please discuss your familiarity with the Federal Rules of Criminal Procedure and the United States Sentencing Commission's Advisory Sentencing Guidelines. Specifically:**
    a. **How often have you cited to either of these tomes during the course of your work?**

Response: In my 37 years in legal practice including nine years as a civil litigator and 26 years as a United States Bankruptcy Court judge, I cannot recall a time that I would have cited to either the Federal Rules of Criminal Procedure nor the Sentencing Guidelines. But based on my experience in these roles (as well as my time serving as an appellate court law clerk on the United States Court of Appeals for the Sixth Circuit), I am confident in my ability to quickly familiarize myself with the relevant rules and guidelines and to apply these rules consistent with applicable Sixth Circuit and Supreme Court precedent.

b. How often have you had an opportunity to work within these constructs during the course of your career?

Response: Please see my answer to Question 13(a).

14. Do you agree with the following statement: "Not everyone deserves a lawyer, there is no civil requirement for legal defense"?

Response: There is no constitutional right to a lawyer in civil cases, but it is my understanding that some states have laws that provide a right to counsel to indigent individuals in certain types of civil proceedings. Beyond this, as a sitting bankruptcy court judge and district court nominee, it would be inappropriate for me to express my personal views on this issue. If confirmed to the District Court, I will be bound to follow Supreme Court and Sixth Circuit precedent, and I will faithfully do so.

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

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

Response: Yes; *Brown v. Board of Education* is binding precedent of the Supreme Court and settled law. If I am fortunate enough to be confirmed as a district judge, I would be bound to follow this decision and all other Supreme Court (and Sixth Circuit) precedent, and I will faithfully do so. This decision involved an issue highly unlikely to be re-litigated.

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

Response: Yes, *Loving v. Virginia* is binding precedent of the Supreme Court. As a sitting bankruptcy judge and district court nominee, it would be inappropriate for me to comment as to whether this case was correctly decided. If I am fortunate enough to be confirmed as a district judge, I would be bound to follow this decision and all other Supreme Court (and Sixth Circuit) precedent, and I will faithfully do so. This decision involved an issue highly unlikely to be re-litigated.

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

Response: *Roe v. Wade* was overturned by *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022). As a sitting bankruptcy judge and district court nominee, it would be inappropriate for me to comment as to whether this case was correctly decided. If I am fortunate enough to be confirmed as a district judge, I would be bound to follow the *Dobbs* decision and all other Supreme Court (and Sixth Circuit) precedent, and I will faithfully do so.

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

Response: *Planned Parenthood v. Casey* was overturned by *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022). As a sitting bankruptcy judge and district court nominee, it would be inappropriate for me to comment as to whether this case was correctly decided. If I am fortunate enough to be confirmed as a district judge, I would be bound to follow the *Dobbs* decision and all other Supreme Court (and Sixth Circuit) precedent, and I will faithfully do so.

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

Response: In *Washington v. Glucksberg*, 117 S. Ct. 2258, 2267 (1997), the Supreme Court held that "in addition to the specific freedoms protected by the Bill of Rights, the 'liberty' specifically protected by the Due Process Clause includes the rights to. . . marital privacy," *citing*, *Griswold v. Connecticut*, 383 U.S. 479 (1965). The *Griswold* decision is binding precedent of the Supreme Court. As a sitting bankruptcy judge and district court nominee, it would be inappropriate for me to comment as to whether this case was correctly decided. I am, and as a district judge would be, bound to follow Supreme Court (and Sixth Circuit) precedent, and I will faithfully do so.

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

Response: *Gonzales v. Carhart* is binding precedent of the Supreme Court. As a sitting bankruptcy judge and district court nominee, it would be inappropriate for me to comment as to whether this case was correctly decided. I am, and as a district judge would be, bound to follow Supreme Court (and Sixth Circuit) precedent, and I will faithfully do so.

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

Response: *McDonald v. City of Chicago* is binding precedent of the Supreme Court. As a sitting bankruptcy judge and district court nominee, it would be inappropriate for me to comment as to whether this case was correctly decided. I am, and as a district judge would be, bound to follow Supreme Court (and Sixth Circuit) precedent, and I will faithfully do so.

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

Response: *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* is binding precedent of the Supreme Court. As a sitting bankruptcy judge and District Court nominee, it would be inappropriate for me to comment as to whether this case was correctly decided. I am, and as a district judge would be, bound to follow Supreme Court (and Sixth Circuit) precedent, and I will faithfully do so.

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

Response: *New York State Rifle & Pistol Association v. Bruen* is binding precedent of the Supreme Court. As a sitting bankruptcy judge and district court nominee, it would be inappropriate for me to comment as to whether this case was correctly decided. I am, and as a district judge would be, bound to follow Supreme Court (and Sixth Circuit) precedent, and I will faithfully do so.

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

Response: *Dobbs v. Jackson Women's Health* is binding precedent of the Supreme Court. As a sitting bankruptcy judge and district court nominee, it would be inappropriate for me to comment as to whether this case was correctly decided. I am, and as a district judge would be, bound to follow Supreme Court (and Sixth Circuit) precedent, and I will faithfully do so.

16. Is threatening Supreme Court justices right or wrong?

Response: Threatening Supreme Court Justices is wrong. Indeed, 18 U.S.C. § 115 makes certain threats against federal judges a crime.

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

Response: This section makes it a crime to conduct certain demonstrations in or near a courthouse or the residence of a judge, juror, witness, or court officer, with the intent of "interfering with, obstructing, or impeding the administration of justice" or of influencing judges, jurors, witnesses, or court officers in the discharge of their duties.

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

Response: I am not aware of any Supreme Court case holding 18 U.S.C. § 1507 to be unconstitutional. As a sitting bankruptcy judge and district court nominee, it would be inappropriate for me to opine on the constitutionality of this provision.

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 defined "fighting words" as "those which by their very utterance inflict injury or tend to incite an immediate breach of the peace," *Chaplinsky v. New Hampshire*, 315 U.S. 568, 572 (1942), and "those personally abusive epithets which, when addressed to the ordinary citizen, are, as a matter of common knowledge, inherently likely to provoke violent reaction." *Virginia v. Black*, 538 U.S. 343, 359 (2003) (quoting *Cohen v. California*, 403 U.S. 15, 20 (1971)).

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

Response: A "true threat" is a statement "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," even if the speaker does "not actually intend to carry out the threat." *Virginia v. Black*, 538 U.S. 343, 359 (2003).

21. 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: I have never spoken with anyone from or anyone directly associated with the Raben Group or the Committee for a Fair Judiciary.

22. 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: I have never spoken with any officials from or anyone directly associated with the organization Demand Justice, and to my knowledge no one has ever spoken with anyone in this organization on my behalf.

23. 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: I have never spoken with any officials from or anyone directly associated with the organization the American Constitution Society, and to my knowledge no one has ever spoken with anyone in this organization on my behalf.

24. 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: I have never spoken with any officials from or anyone directly associated with the organization the Arabella Advisors, and to my knowledge no one has ever spoken with anyone in this organization on my behalf.

25. **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: I have never spoken with any officials from or anyone directly associated with the organization the Open Society Foundation, and to my knowledge no one has ever spoken with anyone in this organization on my behalf.

26. **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.

27. **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.

28. **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: N/A.

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.

29. 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.

30. 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.

31. 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.

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

    Response: I wrote to Senator Sherrod Brown on December 18, 2021, expressing my interest in being considered for the vacancy arising on May 18, 2022. On May 17, 2022, Senator Brown called to tell me that he and Senator Rob Portman were recommending me to the President for nomination. On May 22, 2022, I was interviewed by attorneys from the White House Counsel's Office. On May 23, 2022, I completed and submitted to Senator Brown's office the Ohio Federal District Court Nomination Application. Since May 23, 2022, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On August 1, 2022, my nomination was submitted to the Senate.

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

    Response: I carefully read each question to determine whether it required a yes, no, or more detailed response. I immediately responded to each question that could be answered with a yes or no response. If the questions required legal analysis I reviewed those

materials and drafted responses accordingly. I took into consideration some feedback I received from the Justice Department before finalizing my answers.

Questions for the Record for Jeffrey Paul Hopkins
From Senator Mazie K. Hirono

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

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

      Response: No.

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

      Response: No.

Senator Mike Lee
Questions for the Record
Jeffery Hopkins, Nominee to the United States District Court for the Southern District of Ohio

1. How would you describe your judicial philosophy?

Response: For the past 26 years while serving as a United States Bankruptcy Court judge, I have maintained a judicial philosophy consistent with Canon 3 of the Code of Conduct for United States Judges. I am committed to approaching every case with an open mind. I strive to remain fair and impartial throughout the proceedings—recognizing that every case is extremely important to the parties and their attorneys. I attempt to accord all litigants dignity and respect, while maintaining proper decorum in the courtroom. I thoroughly review the record and the briefs and independently research the applicable law. And when I write an opinion (or issue an oral decision from the bench), I strive to state the decision with clarity, so that the parties involved in the litigation know what I have decided (and did not decide) and why. Finally, I strive mightily to render all decisions timely and without undue delay in keeping with the legal maxim that justice delayed is justice denied.

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

Response: If confirmed (as I have done for the past 26 years as a federal judge), I would first determine whether the Supreme Court or Sixth Circuit had previously interpreted the specific statutory provision at issue. If there was no such precedent, I would begin with the text of the statute, including any relevant statutory definitions, and also consider any applicable canons of construction or other interpretive principles. In appropriate cases, I also would consider persuasive authority from other courts, as well as legislative history. *See Cnty. of Maui v. Hawaii Wildlife Fund*, 140 S. Ct. 1462 (2020) (considering legislative history in interpreting an ambiguous statutory text).

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

Response: In most cases, I would expect to start with applicable Supreme Court and Sixth Circuit precedent interpreting the particular provision at issue. In the unusual instance that I was confronted with a question of first impression involving a constitutional provision that had not yet been interpreted by the Supreme Court or Sixth Circuit, I would first look at the text of the constitutional provision. I would interpret the text in a manner consistent with the methods of interpretation that the Supreme Court has used. For example, in *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court looked to the original public meaning of the Second Amendment.

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

Response: Text and original meaning often play a vital role when interpreting the Constitution. For example, in *Ramos v. Louisiana*, 140 S. Ct. 1390 (2020), in ruling that guilty verdicts for criminal convictions in state court trials must be unanimous, the Supreme Court examined what the term "trial by an impartial jury" meant at the time of the Sixth Amendment's adoption. If confirmed, I would first determine whether the Supreme Court or Sixth Circuit had previously interpreted the specific constitutional provision at issue. I would interpret that text in a manner consistent with the methods of interpretation that the Supreme Court and Sixth Circuit have used, including looking to the original meaning of the constitutional provision.

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

Response: The Supreme Court in *United States v. Ron Pair*, 489 U.S. 235, 240–42 (1989), held that "the plain meaning of legislation should be conclusive, except in the rare cases [in which] the literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters." The Court went on to say that "in such cases the intentions of the drafters, rather than the strict language, controls." I would begin with the text of the statute. If the plain meaning of the text is clear, I would apply the language of the statute fair and impartially to the facts of the case and controversy before me over after determining I have jurisdiction. When the intent of the Congress is clear from the statutory text that is the end of the matter. *Chevron v. U.S.A. Inc v. Nat. Res. Def. Council*, *Inc*., 467 U.S. 837, 842 (1984). In situations where the strict language of the statute is unclear, I am also bound by Supreme Court precedent to consider any applicable canons of construction or other interpretive principles in order to give deference to the intentions of the drafters of the legislation.

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

Response: In refusing to modify or ameliorate the effects of a particular statute that has had unexpected or harsh effects, the Supreme Court has said, "[l]aws enacted with good intention, when put to the test, frequently and to the surprise of the law maker himself, turn out to be mischievous, absurd or otherwise objectionable. But in such case the remedy lies with the law making authority, and not with the courts." *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 571 (1982) (quoting *Crooks v. Harrelson*, 282 U.S. 55, 60 (1930)). As I have done for the past 26 years, and if confirmed as a district court judge, I will impartially apply the language of the Constitution as adopted and the statute as enacted. I also will faithfully follow Supreme Court and Sixth Circuit precedent regardless of changes in social norms and linguistic conventions.

6. What are the constitutional requirements for standing?

Response: The concept of standing seeks to define those cases and controversies that are justiciable and that are appropriately resolved through the judicial process. To establish an Article III case and controversy, the Supreme Court has stated that "[f]irst, the plaintiff must have suffered an 'injury in fact'—an invasion of a legally protected interest which is (a) concrete and particularized and (b) 'actual or imminent, not conjectural or hypothetical.' Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be 'fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court.' Third, it must be 'likely,' as opposed to merely 'speculative,' that the injury will be 'redressed by a favorable decision.'" *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992) (citations omitted and cleaned up). "A federal court is powerless to create its own jurisdiction by embellishing otherwise deficient allegations of standing." *Whitmore v. Arkansas*, 495 U.S. 149, 155–56 (1990). If confirmed, I will faithfully and impartially apply Supreme Court and Sixth Circuit precedent governing standing in all cases and controversies brought before me.

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

Response: Article I of the Constitution provides that "Congress shall have Power . . . To make all Laws which shall be necessary and proper for carrying into Execution the [enumerated] Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof." U.S. Const. Art. I, § 8, cl. 18. In the landmark case of *McCulloch v. Maryland*, 17 U.S. 316 (1819), the Supreme Court held that the Necessary and Proper Clause accords Congress "the right to legislate in that vast mass of incidental powers which must be involved in the constitution." *Id*. at 421. For example, the Supreme Court has consistently held that the Necessary and Proper Clause grants Congress the "implied power to criminalize any conduct that might interfere with the exercise of an enumerated power." *United States v. Comstock*, 560 U.S. 126, 147 (2010).

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

Response: Congressional acts are entitled to a "presumption of constitutionality" and should only be invalidated upon a "plain showing that Congress has exceeded its constitutional bounds." *See United States v. Morrison*, 529 U.S. 598, 607 (2000). That presumption is "not a mere polite gesture. It is a deference due to deliberate judgment by constitutional majorities of the two Houses of Congress that an Act is within their delegated power[.]" *United States v. Five Gambling Devices*, 346 U.S. 441, 449 (1953). If I am confirmed, and I am confronted with the question of the constitutionality of a statute, I would evaluate it by carefully and impartially reviewing the briefs submitted, the arguments made, and the facts presented. I would

apply Supreme Court and Sixth Circuit precedent, guided by the deference that should be shown to the legislative branch and presumption of constitutionality to be accorded to acts of Congress.

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

Response: Yes. The Supreme Court has held that the Constitution protects certain unenumerated rights that are "deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty." *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2242 (2022) (quoting *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997)). The Court has held that "in addition to the specific freedoms protected by the Bill of Rights, the 'liberty' specially protected by the Due Process Clause includes the rights to marry; to have children; to direct the education and upbringing of one's children; to marital privacy; to use contraception; [and] to bodily integrity." *Glucksberg*, 521 U.S. at 719–20 (citations omitted).

10. What rights are protected under substantive due process?

Response: Please see my response to Question 9.

11. If you believe substantive due process protects some personal rights such as a right to abortion, but not economic rights such as those at stake in *Lochner v. New York*, on what basis do you distinguish these types of rights for constitutional purposes?

Response: As a sitting bankruptcy judge and district court nominee any beliefs I may have about what personal or economic rights are protected by substantive due process will play no role in my judicial decision making. However, I note that *Dobbs v. Jackson Women's Health Org*., 142 S. Ct. 2228 (2022) overruled *Roe v. Wade* and *Planned Parenthood v. Casey* and, *West Coast Hotel v. Parrish*, 300 U.S. 379 (1937) overruled *Lochner v. New York*, 198 U.S. 45 (1905). If confirmed as a district judge and called upon to distinguish such rights, I would be bound to follow all Supreme Court and Sixth Circuit precedent and will faithfully do so.

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

Response: In *Gonzales v. Raich*, 545 U.S. 1 (2005), the Supreme Court listed three general categories of activity that Congress may regulate with its commerce power: (1) "the channels of interstate commerce," (2) "the instrumentalities of interstate commerce, and persons or things in interstate commerce," and (3) "activities that substantially affect interstate commerce." *Id*. at 16–17 (citations omitted); *see also United States v. Lopez,* 514 U.S. 549, 558–59 (1995) (holding that the Gun-Free School Zones Act, which made it federal offense for any individual to knowingly possess a firearm in a place that the individual knew or had reasonable cause to believe was a school zone, exceeded Congress's commerce clause authority, because

the possession of a gun in a local school zone was not economic activity that substantially affected interstate commerce).

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

Response: The Supreme Court has held that race, religion, national origin, and alienage are suspect classes. *See, e.g.*, *Graham v. Richardson*, 403 U.S. 365, 372 (1971) (considering whether members of a class are a "discrete and insular minority . . . for whom such heightened judicial solicitude is appropriate"); *see also San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 28 (1973) (discussing "traditional indicia of suspectness" as classes that are "saddled with . . . disabilities" or that have been "subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process").

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

Response: The principle of "checks and balances" has been defined as "[t]he theory of governmental power and functions whereby each branch of government has the ability to counter the actions of any other branch, so that no single branch can control the entire government." Checks and Balances, Black's Law Dictionary (11th ed. 2019). The concept of "separation of powers" generally refers to the "division of governmental authority into three branches of government — legislative, executive, and judicial — each with specified duties on which neither of the other branches can encroach." Separation of Powers, Black's Law Dictionary (11th ed. 2019). The separation of powers doctrine is believed to help establish a system of checks and balances in government "designed to protect the people against tyranny." *Id*.; *see also I.N.S. v. Chadha*, 462 U.S. 919, 962 (1983) (Powell, J., concurring) (noting that "the separation of powers doctrine generally. . . reflect[s] the Framers' concern that trial by a legislature lacks the safeguards necessary to prevent the abuse of power."); *Myers v. United States*, 272 U.S. 50, 293 (1926) (Brandeis, J., dissenting) ("The doctrine of the separation of powers was adopted by the convention of 1787 not to promote efficiency but to preclude the exercise of arbitrary power. The purpose was not to avoid friction, but, by means of the inevitable friction incident to the distribution of the governmental powers among three departments, to save the people from autocracy.").

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

Response: I would review the text of the provision(s) of the Constitution at issue and look to Supreme Court and Sixth Circuit precedent interpreting such provision(s).

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

Response: Under the Code of Conduct for United States Judges, a judge should treat all litigants, lawyers, witnesses, and jurors with respect and should decide cases with fairness and impartiality. Empathy should not play a role in a judge's consideration of a case.

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

Response: Both outcomes should be avoided at all costs.

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

Response: I have not studied this issue and do not feel equipped to opine as to the trend referenced.

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

Response: I have no personal definitions of either of these terms, and I do not have an opinion about the degree to which these terms differ. However, Black's Law Dictionary defines "judicial review" as "[a] court's power to review the actions of other branches or levels of government; [especially] the courts' power to invalidate legislative and executive actions as being unconstitutional." Judicial Review, Black's Law Dictionary (11th ed. 2019). This fundamental principle of the function of the Third Branch was first established in the landmark case of *Marbury v. Madison*, 5 U.S. 137 (1803). "Judicial supremacy," on the other hand, has been defined as "[t]he doctrine that interpretations of the Constitution by the federal judiciary in the exercise of judicial review, [especially] U.S. Supreme Court interpretations, are binding on the coordinate branches of the federal government and the states." Judicial Supremacy, Black's Law Dictionary (11th ed. 2019).

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

Response: Article I of the United States Constitution establishes qualifications for Representatives and Senators and grants them legislative authority. *See* U.S. Const. Art. I, §§ 1–3. And Article II establishes the President's powers. However, the Constitution does not fix the roles or duties of individual Members of Congress. The Speech or Debate Clause reinforces the separation of powers and protects legislative independence. *See Eastland v. U.S. Servicemen's Fund*, 421 U.S. 491, 502 (1975) (quoting *United States v. Brewster*, 408 U.S. 501, 507 (1972)). And in *United States v. Brewster*, the Supreme Court said that the Speech or Debate Clause must be applied "in such a way as to insure the independence of the legislature without altering the historic balance of the three co-equal branches of Government." *Brewster*, 408 U.S. at 508. Decisions on how elected officials should balance their independent obligations to follow the Constitution with the need to respect duly rendered judicial decisions resides within the province of each elected official.

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

Response: If confirmed as a district court judge (as I have done for the past 26 years as a federal bankruptcy court judge), I will thoroughly review the record in each case filed where jurisdiction is proper, apply the law to the facts with impartiality, and faithfully follow Supreme Court and Sixth precedent, while striving to render timely, concise, clear, and well-reasoned opinions.

22. As a district court judge, you would be bound by both Supreme Court precedent and prior circuit court precedent. What is the duty of a lower court judge when confronted with a case where the precedent in question does not seem to be rooted in constitutional text, history, or tradition and also does not appear to speak directly to the issue at hand? In applying a precedent that has questionable constitutional underpinnings, should a lower court judge extend the precedent to cover new cases, or limit its application where appropriate and reasonably possible?

Response: If I am fortunate enough to be confirmed as a district court judge, I would be bound to follow all Supreme Court and Sixth Circuit precedent, and I will faithfully do so. If there is no precedent directly on point, I would search for closely analogous precedent and apply the law to the facts of the case.

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

Response: None. *See* U.S.S.G. §5H1.10 (providing that race, sex, national origin, creed, religion, and socio-economic status "are not relevant in the determination of a sentence").

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

Response: Black's Law Dictionary defines "equity" as "[f]airness; impartiality; evenhanded dealing." Equity, Black's Law Dictionary (11th ed. 2019). As a sitting bankruptcy judge and district court nominee, it would be inappropriate for me to express my personal views on this matter.

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

Response: Please sees my response to Question 24. Black's Law Dictionary defines "equality" as "[t]he quality, state, or condition of being equal," Equality, Black's Law Dictionary (11th ed. 2019). The two definitions are not the same, but as a sitting bankruptcy judge and district court nominee, it would be inappropriate for me to opine further into the differences.

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

Response: If confirmed, I would faithfully and impartially apply the precedent of the Supreme Court and Sixth Circuit when interpreting the Fourteenth Amendment in a case or controversy over which I may have proper jurisdiction. I am not aware of a Supreme Court or Sixth Circuit case addressing the Biden Administration's definition of the term "equity" and its relationship to the Fourteenth Amendment. As a district court nominee, it would be inappropriate for me to opine on a matter that could come before me.

27. How do you define "systemic racism?"

Response: I have no personal definition of "systemic racism." Black's Law Dictionary defines systemic discrimination 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." Discrimination, Black's Law Dictionary (11th ed. 2019).

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

Response: I have no personal definition of critical race theory, but Black's Law Dictionary has defined it as "[a] reform movement within the legal profession,

particularly within academia, whose adherents believe that the legal system has disempowered racial minorities." Critical Race Theory, Black's Law Dictionary (11th ed. 2019).

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

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

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

Questions for the Record for Jeffery Paul Hopkins, nominated to be United States District Judge for the Southern District of Ohio

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: Racial discrimination is illegal and any law or governmental action that discriminates on the basis of race is subject to strict scrutiny. If confirmed, I will review the record objectively, impartially apply the law to facts, and faithfully follow Supreme Court and Sixth Circuit precedent.

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: In determining whether an unenumerated right is a constitutionally protected one, the Supreme Court has considered whether the right was "deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed." *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997) (internal quotation marks omitted). As a sitting federal judge and nominee under consideration for the District Court, it would be inappropriate for me to express a personal opinion on this topic, as it might suggest to future litigants that I have prejudged the matter. I am, and as a district judge would be, bound to follow Supreme Court and Sixth Circuit precedent, and I will faithfully do so.

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: For the past 26 years while serving as a United States Bankruptcy Court judge, I have maintained a judicial philosophy consistent with Canon 3 of the Code of Conduct for United States Judges. I am committed to approaching every case with an open mind. I strive to remain fair and impartial throughout the proceedings—recognizing that every case is extremely important to the parties and their attorneys. I attempt to accord all litigants dignity and respect, while maintaining proper decorum in the courtroom. I thoroughly review the record and the briefs and independently research the applicable law. And when I write an opinion (or issue an oral decision from the bench), I strive to state the decision with clarity, so that the parties involved in the litigation know what I have decided (and did not decide) and why. Finally, I strive mightily to render all decisions timely and without undue delay in keeping with the legal maxim that justice delayed is justice denied. Respectfully, I have not subscribed to any particular Justice's philosophy. I admire qualities of each Supreme Court Justice, such as their commitment to scholarship and civic engagement, and I attempt to emulate those qualities in my current role.

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

Response: "Originalism" has been defined as "[t]he doctrine that words of a legal instrument are to be given the meanings they had when they were adopted" and as "[t]he doctrine that a legal instrument should be interpreted to effectuate the intent of those who prepared it or made it legally binding." Originalism, Black's Law Dictionary (11th ed. 2019). I have never characterized myself based on a particular method of Constitutional interpretation. Originalism is one of the methods the Supreme Court has used to interpret certain Constitutional provisions. The Supreme Court, for example, has held that originalism applies in Second Amendment cases as demonstrated by *Heller*, *McDonald*, and *Bruen*. In those cases, the Supreme Court reinforced the right of law-abiding persons to possess a handgun in the home and to carry one in public for self-defense. Originalism was also applied in *Crawford v. Washington*, a case involving the Confrontation Clause, where it was determined that the playing of a wife's recorded statement was a violation

of the Sixth Amendment. If I am confirmed as a district court judge, I will faithfully apply and follow all binding Supreme Court and Sixth Circuit precedent with respect to the particular interpretive method that applies in a given case.

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

Response: "Living constitutionalism" has been defined as "[t]he doctrine that the Constitution should be interpreted and applied in accordance with changing circumstances and, in particular, with changes in social values." Living Constitutionalism, Black's Law Dictionary (11th ed. 2019). I have never characterized myself based on a particular method of Constitutional interpretation. If I am confirmed as a district court judge, I will faithfully apply and follow all binding Supreme Court and Sixth Circuit precedent with respect to the particular interpretive method that applies in a given case.

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

Response: In unusual instance that I was confronted with a question of first impression involving a constitutional provision that had not yet been interpreted by the Supreme Court or Sixth Circuit, I would first look to the text of the provision. I would interpret the text in a manner consistent with the methods of interpretation that the Supreme Court has authorized. In *District of Columbia. v. Heller*, 554. U.S. 570 (2008), for example, the Supreme Court examined the original public meaning of the Second Amendment.

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: On some constitutional questions, the Supreme Court has considered our "evolving standards of decency" as a society or "contemporary community standards" as part of the legal analysis. *See, e.g.*, *Atkins v. Virginia*, 536 U.S. 304, 311–12 (2002) (construing the Eighth Amendment in light of society's "evolving standards of decency" to determine whether the punishment at issue was "excessive" and thus unconstitutional); *Miller v. California*, 413 U.S. 15, 24 (1973) (considering contemporary community standards to analyze free speech defense in obscenity cases). If confirmed as a district court judge, I would faithfully apply all binding Supreme Court and Sixth Circuit precedent and will use any methods of statutory interpretation that such precedent dictates.

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

Response: Article V provides the exclusive means by which the Constitution may be amended.

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

Response: The Supreme Court's decision in *Dobbs* is binding precedent.

a. Was it correctly decided?

Response: As a sitting bankruptcy judge and district court nominee, it would be inappropriate for me to comment as to whether this case was correctly decided. I am, and as a district judge would be, bound to follow Supreme Court (and Sixth Circuit) precedent, and I will faithfully do so.

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

Response: The Supreme Court's decision in *Bruen* is binding precedent.

a. Was it correctly decided?

Response: As a sitting bankruptcy judge and district court nominee, it would be inappropriate for me to comment as to whether this case was correctly decided. I am, and as a district judge would be, bound to follow Supreme Court (and Sixth Circuit) precedent, and I will faithfully do so.

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

Response: Yes, the Supreme Court's decision in *Brown v. Board* is binding precedent and settled law. This decision involved an issue highly unlikely to be re-litigated.

a. Was it correctly decided?

Response: Yes, *Brown v. Board of Education* is binding precedent of the Supreme Court and settled law. If I am fortunate enough to be confirmed as a district judge, I would be bound to follow this decision and all other Supreme Court (and Sixth Circuit) precedent, and I will faithfully do so.

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

Response: Under 18 U.S.C. § 3142, a rebuttable presumption in favor of pretrial detention is triggered if a judicial officer finds that there is probable cause to believe that a person committed offenses identified within the statute, including, for example,

offenses for which the maximum sentence is life imprisonment or death, offenses where the maximum sentence is ten years or more under the Controlled Substances Act, and certain other drug or firearms offenses. *See* 18 U.S.C. § 3142(e), (f).

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

Response: The statute itself indicates a purpose to "reasonably assure the appearance of the person as required and the safety of any other person and the community." 18 U.S.C. § 3142(e), (f). Further, the Sixth Circuit has stated that "the presumption reflects Congress's substantive judgment that particular classes of offenders should ordinarily be detained prior to trial." *United States v. Stone*, 608 F.3d 939, 945 (6th Cir. 2010).

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. Under the First Amendment, the Supreme Court has found that if a law's burden on the free exercise of religion is not neutral and generally applicable to all individuals regardless of religion, the law must withstand strict scrutiny to pass muster. *See generally Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2021); *Tandon v. Newsom*, 141 S. Ct. 1294 (2021); *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n*, 138 S. Ct. 1719 (2018); *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993).

The government may also be subject to restrictions imposed by statutes such as the Religious Land Use and Initialized Persons Act ("RLUIPA") and the Religious Freedom Restoration Act ("RFRA"). These statutes "aim to ensure 'greater protection for religious exercise than is available under the First Amendment,'" *Ramirez v. Collier*, 142 S. Ct. 1264, 1277 (2022), by subjecting even laws of general applicability to strict scrutiny.

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

Response: Under the First Amendment's Free Exercise Clause, laws that burden religion are first analyzed to determine if they are both neutral and generally applicable. *See Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531–32 (1993). If a law's burden on the free exercise of religion is not neutral and generally applicable to all individuals regardless of religion—that is, if it discriminates based on religion—the law must withstand strict scrutiny analysis to pass constitutional muster. To withstand strict scrutiny, a law "must be justified by a compelling governmental interest" and "narrowly tailored to advance that interest." *Id*.

The government may also be subject to restrictions imposed by statutes such as the Religious Land Use and Initialized Persons Act ("RLUIPA") and the Religious

Freedom Restoration Act ("RFRA"). These statutes "aim to ensure 'greater protection for religious exercise than is available under the First Amendment,'" *Ramirez v. Collier*, 142 S. Ct. 1264, 1277 (2022), by subjecting even laws of general applicability to strict scrutiny.

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 held that the applicants were entitled to a preliminary injunction, reasoning that: (1) the applicants demonstrated likelihood of success on the merits by showing that the restrictions violated the requirement of neutrality to religion, and were not narrowly tailored because less restrictive rules could be adopted to minimize the risk of the spread of COVID-19 to those attending religious services; (2) the applicants would suffer irreparable harm from the loss of First Amendment freedoms if the restrictions were enforced; and (3) there was no evidence that granting the injunction would cause harm to the public. *Id*. at 66–68.

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 plaintiffs sought an injunction on the State of California's restrictions on private gatherings during the COVID-19 pandemic, arguing that the restrictions violated their First and Fourteenth Amendment rights. The Supreme Court held that the Ninth Circuit's failure to grant an injunction pending appeal was erroneous, reasoning that California's restrictions contained "myriad exceptions and accommodations for comparable activities, thus requiring the application of strict scrutiny," and that the applicants were likely to succeed on the merits of their free exercise claim because the restrictions were not narrowly tailored. *Id*. at 1297-98.

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

Response: Yes. The First Amendment provides, in part, that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof."

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

Response: In *Masterpiece Cakeshop, Ltd. v. Colorado C.R. Comm'n*, 138 S. Ct. 1719 (2018), the Supreme Court held that the Colorado Civil Rights Commission's decision and issuance of a cease and desist order—stemming from a cake shop and its owner's refusal to sell a wedding cake to a same-sex couple—violated the First Amendment's Free Exercise Clause. The Court found that the Commission's treatment of the shop owner's case included "elements of a clear and impermissible hostility toward the sincere religious beliefs" and that such treatment "was inconsistent with the First Amendment's guarantee that our laws be applied in a manner that is neutral toward religion." *Id*. at 1729, 1732.

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. The Supreme Court has determined that individuals are entitled to claim the protection of the Free Exercise Clause for "sincerely held religious beliefs" even if the belief is not resulting from a tenet or teaching of an established religious body or "responding to the commands of a particular religious organization." *Frazee v. Ill. Dep't of Emp. Sec.*, 489 U.S. 829, 832-35 (1989). A court's "narrow function" is to determine whether the asserted religious belief is "an honest conviction." *Burwell v. Hobby Lobby Stores, Inc*., 573 U.S. 682, 725 (2014) (quoting *Thomas v. Review Bd. of Indiana Empl. Sec. Div.,* 450 U.S. 707, 715 (1981)); *see also Ackerman v. Washington*, 16 F.4th 170, 181 (6th Cir. 2021) (stating that the standard for determining sincerity under RLUIPA is "just a credibility assessment" that asks if the "religious belief is honest" (internal quotations omitted)).

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

Response: Please see my response to Question 19.

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

Response: Please see my response to Question 19.

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

Response: As a sitting bankruptcy judge and district court nominee, it would be inappropriate for me to express my personal views on the official position of any particular church or religious faith.

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: In *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049 (2020), the Supreme Court held that the "ministerial exception" to laws governing the employment relationship between religious institutions and certain employees, based in the First Amendment's Religion Clauses, applied to foreclose two teachers' employment discrimination claims. The Court found that the ministerial exception applied even though neither employee had the title of "minister" and they had less formal religious training than the employee to whom the ministerial exception was applied in *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171, 196 (2012), because "their core responsibilities as teachers of religion were essentially the same." *Morrissey-Berru*, 140 S. Ct. at 2066. Moreover, "both their schools expressly saw them as playing a vital part in carrying out the mission of the church, and the schools' definition and explanation of their roles is important." *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 of Philadelphia's refusal to contract with Catholic Social Services (CSS) to provide foster care unless it certified same-sex couples as foster parents violated the First Amendment's Free Exercise Clause. The Court found that the City failed to assert a sufficient "compelling reason why it has a particular interest in denying an exception to CSS while making them available to others," and thus the City's actions did not survive strict scrutiny analysis.

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 Court held that the "nonsectarian" criteria of Maine's tuition assistance program, required for private schools to be eligible to receive the tuition payments, violates the Free Exercise Clause of the First Amendment. The Court found that the program did not survive a strict scrutiny analysis, reasoning that "[a] State's antiestablishment interest does not justify enactments that exclude some members of the community from an otherwise generally available public benefit because of their religious exercise." *Id*. at 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 Court held that the school district violated the First Amendment by suspending and ultimately

firing a high school football coach for kneeling to pray at midfield after games. The Court found that "a government entity sought to punish an individual for engaging in a brief, quiet, personal religious observance doubly protected by the Free Exercise and Free Speech Clauses of the First Amendment. And the only meaningful justification the government offered for its reprisal rested on a mistaken view that it had a duty to ferret out and suppress religious observances even as it allows comparable secular speech. The Constitution neither mandates nor tolerates that kind of discrimination." *Id*. at 2433.

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), members of an Amish community in Fillmore County, Minnesota claimed that an ordinance requiring homes to have a modern septic system violated the Religious Land Use and Institutionalized Persons Act (RLUIPA). The Court vacated the lower court's decisions and remanded the case to state court for further proceedings in light the Court's decision in *Fulton v. Philadelphia*, 141 S. Ct. 1868 (2021). In his concurrence, Justice Gorsuch expressed his view that "the County and courts below misapprehended RLUIPA's demands" and misapplied the strict scrutiny standard. *Mast*, 141 S. Ct. at 2432. Specifically, he noted that the County and lower courts 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." Instead, he says that, under *Fulton*, strict scrutiny requires "a more precise analysis" that requires scrutinizing "the asserted harm of granting specific exemptions to particular religious claimants." *Id*. Justice Gorsuch also stated that the lower court errors included "failing to give due weight to exemptions other groups enjoy," "failed to give sufficient weight to rules in other jurisdictions." *Id*. at 2432–33.

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: As a sitting bankruptcy judge and district court nominee, it would be inappropriate for me to express my personal views on a matter that might come before me.

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: The Judicial Conference of the United States recently released the *Strategic Plan for the Federal Judiciary*. Strategy 4.3 reiterates the Federal Judiciary's commitment to "[e]nsure an exemplary workplace free from discrimination, harassment, retaliation, and abusive conduct." Moreover, Canon 3(B) of the Code of Conduct for United States Judges which provides, in part, that "[a] judge should diligently discharge administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court personnel," and that "[a] judge should exercise the power of appointment fairly and only on the basis of merit, avoiding unnecessary appointments, nepotism, and favoritism." I am committed to following Strategy 4.3 and Canon 3(B), and if confirmed, faithfully continue to do so, consistent with my oath of office, as I have done for the past 26 years while serving as a United States Bankruptcy Court judge.

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. Racial discrimination is inconsistent with the oath taken by United States judges, which requires each judge to "administer justice without respect to persons, and do equal right to the poor and to the rich," and to "faithfully and impartially discharge and perform all the duties" incumbent upon the judge "under the Constitution and laws of the United States." *See* 28 U.S.C. § 453.

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

Response: As a sitting bankruptcy judge and district court nominee, it would be inappropriate for me to express my views on either the appropriateness or

constitutionality of considerations made in the political appointment process.

30. Is the criminal justice system systemically racist?

Response: Respectfully, while this question raises an important societal concern, it is one that must be addressed by policymakers, academics, researchers, and the public. I am generally aware that Congress has enacted bipartisan criminal justice legislation such as the Fair Sentencing Act of 2010 that reduced sentencing disparity between crack and powder cocaine offenses from 100-to-1 to 18-to-1, in part, because of the deleterious impact that the former sentencing laws have had on communities of color across the country. If confirmed, I am committed to impartially apply the law in all cases and controversies that come before me, as I have done in my 26 years as a bankruptcy judge.

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: It is up to the legislature to determine whether it is appropriate to increase or decrease the number of justices on the Supreme Court. As a sitting bankruptcy judge and district court nominee, it would be inappropriate for me to express my personal views on this policy issue.

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: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court examined "the text and history" of the Second Amendment to find that, while the rights it secures are not unlimited, "it conferred an individual right to keep and bear arms." *Id.* at 595.

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: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court held that the District of Columbia's ban on possession of handguns in the home and the requirement any lawful firearms kept be disassembled or inoperable by use of a trigger lock, and thus nonfunctional for the purpose of self-defense, violated the Second Amendment. The Court examined "the text and history" of the Second Amendment to find that, while the rights it secures are not unlimited, "it conferred an individual right to keep and bear arms," unconnected with militia service. *Id.* at 595.

In *McDonald v. Chicago*, 451 U.S. 742 (2010), the Court found that the right to possess a handgun in the home for the purpose of self-defense, established in *Heller*, "applies equally to the Federal Government and the States." *Id*. at 791. The Court then remanded the case to the Seventh Circuit to determine whether the policies at issue (two Illinois cities' handgun ban and related city ordinances) violated an individual's right to keep and bear arms for self-defense. *Id*.

In *New York State Rifle & Pistol Association v. Bruen*, 142 S. Ct. 2111, 2132 (2022), the Court held that states may not prohibit the possession of handguns outside of the home for self-protection, striking down New York's requirement that prohibited individuals from carrying concealed handguns unless they provided proof of "proper cause" for doing so. While some restrictions on carrying firearms in locations deemed "sensitive places" may be allowable, ultimately the Court found "that the Second and Fourteenth Amendments protect an individual's right to carry a handgun for self-defense outside the home." *Id*. at 2122, 2132. The case instructs courts to "assess whether modern firearms regulations are consistent with the Second Amendment's text and historical understanding." *Id*. at 2131.

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

Response: Yes. In a trilogy of Second Amendment cases, the Supreme Court has held that an individual has the right to possess a handgun at home for self-defense, *see District of Columbia v. Heller*, 554 U.S. 570 (2008); that the right to possess a handgun for self-defense applies to states and their subdivisions, *see McDonald v. City of Chicago*, 561 U.S. 742 (2010); and that the right to "bear arms" under the Second Amendment permits the carrying of a firearm by law abiding citizens in public, *see New York Rifle & Pistol Association v. Bruen*, 142 S. Ct. 2111 (2022).

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

Response: No. The Supreme Court in *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022), stated that "[t]he 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*, 561 U.S. 742, 780 (2010)). However, the Supreme Court earlier cautioned in *District of Columbia v. Heller*, 554 U.S. 570 (2008), that, "[l]ike most rights, the right secured by the Second Amendment is not unlimited." *Id*. at 626.

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

Response: No. See my response to Question 36.

38. Is it appropriate for the executive under the Constitution to refuse to enforce a law,

absent constitutional concerns? Please explain.

Response: Article II of the Constitution vests the executive power in the President of the United States and requires that the President "take care that the Laws be faithfully executed." As a sitting bankruptcy judge and district court nominee, it would be inappropriate for me to express my personal views on a matter that might come before me. If a case comes before me in which the decision for the executive to refuse to enforce a law is at issue, I am, and as a district judge would be, bound to carefully study the facts of the case and to follow Supreme Court and Sixth Circuit precedent, and I will faithfully do so.

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

Response: As a bankruptcy judge for more than 26 years, I have not had the opportunity to encounter this issue. If confirmed, I would faithfully follow the precedent established by the Supreme Court and the Sixth Circuit.

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

Response: No. Capital punishment is authorized for certain offenses under 18 U.S.C. § 3591. The President may not unilaterally repeal an act of Congress.

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

Response: In *Alabama Association of Realtors v. Department of Health and Human Services*, 141 S. Ct. 2485 (2021), the Supreme Court granted an application to vacate a stay of "a nationwide moratorium on evictions of any tenants who live in a county that is experiencing substantial or high levels of COVID–19 transmission and who make certain declarations of financial need" imposed by the Centers for Disease Control and Prevention (CDC). *Id*. at 2486. The Court held that the stay was no longer justified under the applicable four-factor test, finding that the applicants had a substantial likelihood to succeed on the merits of their argument that the CDC has exceeded its authority. *Id*. at 2488.

42. Your entire career has been focused on civil law matters and you yourself have estimated that your experience with criminal law is about one percent. What experience do you have that you believe qualifies you for the role of adjudicating federal criminal cases and imposing sentences?

Response: I have served as a trial judge in a federal court for 26 years, including seven years as the Chief Judge. As a trial court judge, I have had to apply the Federal Rules of Civil Procedure and Federal Rules of Evidence with regularity. I have also had to interpret and apply a variety of federal and state statutes. Before becoming a federal judge, I practiced law with a respected multinational law firm handling complex civil

litigation, and with the United States Attorney's office prosecuting a variety of cases under the False Claims Act and federal forfeiture laws. In addition, I served as a law clerk on an Ohio court of appeals and the United States Court of Appeals for the Sixth Circuit where criminal cases were frequently appealed. If confirmed, I am confident in my ability to adjudicate federal criminal cases and impose sentences based on my decades of experience as a federal trial judge, trial lawyer, and appeals court law clerk, along with the training I will receive at the Federal Judicial Center and at the Sixth Circuit from knowledgeable and skilled trial judges.

Senator Ben Sasse
Questions for the Record for Jeffery Paul Hopkins
U.S. Senate Committee on the Judiciary
Hearing: "Nominations"
October 12, 2022

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

   Response: No.

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

   Response: For the past 26 years while serving as a United States Bankruptcy Court judge, I have maintained a judicial philosophy consistent with Canon 3 of the Code of Conduct for United States Judges. I am committed to approaching every case with an open mind. I strive to remain fair and impartial throughout the proceedings—recognizing that every case is extremely important to the parties and their attorneys. I attempt to accord all litigants dignity and respect, while maintaining proper decorum in the courtroom. I thoroughly review the record and the briefs and independently research the applicable law. And when I write an opinion (or issue an oral decision from the bench), I strive to state the decision with clarity, so that the parties involved in the litigation know what I have decided (and did not decide) and why. Finally, I strive mightily to render all decisions timely and without undue delay in keeping with the legal maxim that justice delayed is justice denied.

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

   Response: "Originalism" has been defined as "[t]he doctrine that words of a legal instrument are to be given the meanings they had when they were adopted" and as "[t]he doctrine that a legal instrument should be interpreted to effectuate the intent of those who prepared it or made it legally binding." Originalism, Black's Law Dictionary (11th ed. 2019). I have never characterized myself based on a particular method of Constitutional interpretation. Originalism is one of the methods the Supreme Court has used to interpret certain Constitutional provisions. The Supreme Court, for example, has held that originalism applies in Second Amendment cases as demonstrated by *Heller*, *McDonald*, and *Bruen*. In those cases, the Supreme Court reinforced the right of law-abiding persons to possess a handgun in the home and to carry one in public for self-defense. Originalism was also applied in *Crawford v. Washington*, a case involving the Confrontation Clause, where it was determined that the playing of a wife's recorded statement was a violation of the Sixth Amendment. Originalism has been recognized by the Supreme Court, and if I am confirmed as a district court judge, I will faithfully apply doctrine of originalism where mandated by binding Supreme Court and Sixth Circuit precedent.

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

   Response: "Textualism" has been defined as "[t]he doctrine that the words of a governing text are of paramount concern and that what they fairly convey in their context is what the text means." Textualism, Black's Law Dictionary (10th ed. 2014). I have never characterized myself as a textualist or ascribed to any other method of statutory interpretation. If confirmed as a district court judge, I would faithfully apply all binding Supreme Court and Sixth Circuit precedent and will use the methods of statutory interpretation that such precedent dictates.

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

   Response: Our Constitution is an enduring document that has withstood the test of time. "Living constitutionalism" has been defined as "[t]he doctrine that the Constitution should be interpreted and applied in accordance with changing circumstances and, in particular, with changes in social values." Living Constitutionalism, Black's Law Dictionary (11th ed. 2019). I have never characterized myself as a living constitutionalist or ascribed to any other method of Constitutional interpretation. If confirmed as a district court judge, I would faithfully apply all binding Supreme Court and Sixth Circuit precedent and will use the methods of statutory interpretation that such precedent dictates.

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

   Response: For the past 26 years while serving as a United States Bankruptcy Court judge, I have maintained a judicial philosophy consistent with Canon 3 of the Code of Conduct for United States Judges. I am committed to approaching every case with an open mind. I strive to remain fair and impartial throughout the proceedings—recognizing that every case is extremely important to the parties and their attorneys. I attempt to accord all litigants dignity and respect, while maintaining proper decorum in the courtroom. I thoroughly review the record and the briefs and independently research the applicable law. And when I write an opinion (or issue an oral decision from the bench), I strive to state the decision with clarity, so that the parties involved in the litigation know what I have decided (and did not decide) and why. Finally, I strive mightily to render all decisions timely and without undue delay in keeping with the legal maxim that justice delayed is justice denied. Respectfully, I have not subscribed to any particular Justice's philosophy. I admire qualities of each Supreme Court Justice, such as their commitment to scholarship and civic engagement, and I attempt to emulate those qualities in my current role.

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

Response: In the Sixth Circuit, "a three-judge panel may not overturn a prior decision unless a Supreme Court decision 'mandates modification' of Sixth Circuit precedent," and "[a]bsent such mandate, or a decision from our en banc court overruling our precedent," the court is bound by what it has said before. *RLR Invs., LLC v. City of Pigeon Forge, Tenn.*, 4 F.4th 380, 390 (6th Cir. 2021), *cert. denied sub nom. RLR Invs., LLC v. City of Pigeon Forge*, 142 S. Ct. 862 (2022). A circuit court, whether sitting *en banc* or otherwise, is bound by Supreme Court precedent. If confirmed as a district court judge, I will be obligated to follow all binding Sixth Circuit and Supreme Court precedent, and I will faithfully do so.

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

Response: Please see the response to Question 7.

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

Response: On matters requiring statutory interpretation, the Supreme Court has made clear that "the authoritative statement is the statutory text, not the legislative history or any other extrinsic material. Extrinsic materials have a role in statutory interpretation only to the extent they shed a reliable light on the enacting Legislature's understanding of otherwise ambiguous terms." *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568–69 (2005). If confirmed, I would first determine whether the Supreme Court or Sixth Circuit had previously interpreted the specific statutory provision at issue (as I have done for the past 26 years as a federal judge). If there was no such precedent, I would begin with the text of the statute, including any relevant statutory definitions, and also consider any applicable canons of construction or other interpretive principles. In appropriate cases, I also would consider persuasive authority from other courts, as well as legislative history. *See Cnty. of Maui v. Hawaii Wildlife Fund*, 140 S. Ct. 1462 (2020) (considering legislative history in interpreting an ambiguous statutory text).

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

Response: If confirmed as a district court judge, the factors I will consider in sentencing defendants are those set forth in 18 U.S.C. § 3553(a), as well as the United States Sentencing Commission Guidelines, consistent with Sixth Circuit and Supreme Court precedent. While courts are instructed to consider "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct," *see* 18 U.S.C. § 3553(a)(6), the Sentencing Commission Guidelines include a policy statement that race, sex, national origin, creed, religion, and socio-

economic status “are not are not relevant in the determination of a sentence.” U.S.S.G. § 5H1.10.

Senator Josh Hawley
Questions for the Record

Jeffery Hopkins
Nominee, U.S. District Court for the Southern District of Ohio

1. **Then-Judge Ketanji Brown Jackson made a practice of refusing to apply several enhancements in the Sentencing Guidelines when sentencing child pornography offenders. Please explain whether you agree with each of the following Guidelines enhancements and whether, if you are confirmed, you intend to use them to increase the sentences imposed on child pornography offenders.**

    a. **The enhancement for material that involves a prepubescent minor or a minor who had not attained the age of 12 years**

    Response: I am not familiar with Justice Jackson's former sentencing practices. If confirmed, I will follow 18 U.S.C. § 3553, the Sentencing Guidelines, and Supreme Court and Sixth Circuit precedent in my sentencing decisions.

    b. **The enhancement for material that portrays sadistic or masochistic conduct or other depictions of violence**

    Response: Please see my response to Question 1(a).

    c. **The enhancement for offenses involving the use of a computer**

    Response: Please see my response to Question 1(a).

    d. **The enhancements for the number of images involved**

    Response: Please see my response to Question 1(a).

2. **Federal law currently has a higher penalty for distribution or receipt of child pornography than for possession. It's 5-20 years for receipt or distribution. It's 0-10 years for possession. The Commission has recommended that Congress align those penalties, and I have a bill to do so.**

    a. **Do you agree that the penalties should be aligned?**

    Response: It is up to the legislature to determine whether it is appropriate to align these penalties. As a sitting bankruptcy judge and District Court nominee, it would be inappropriate for me to express my personal views on

this policy issue. If confirmed, I will follow the applicable law, Sentencing Guidelines, and Supreme Court and Sixth Circuit precedent in my sentencing decisions.

b. If so, do you think the penalty for possession should be increased, receipt and distribution decreased, or a mix?

Response: Please see my response to Question 2(a).

3. 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. I am unfamiliar with Justice Marshall's statement as quoted. If confirmed, I will carefully review the record in each case, impartially apply the law, and follow Supreme Court and Sixth Circuit precedent when rendering decisions in cases that come before me.

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

Response: Respectfully, I am again unfamiliar with this statement, and I believe that it would be inappropriate for me to comment without having more information. However, as a sitting United States Bankruptcy Court judge for the past 26 years, including seven years as Chief Judge, I took an oath to "administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me" as a bankruptcy court judge "under the Constitution and laws of the United States." *See* 28 U.S.C § 453. If confirmed as a district court judge, I am committed to continue abiding by my oath. I am also committed to faithfully following all Supreme Court and Sixth Circuit precedent in all cases and controversies that come before me.

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

Response: Abstention is the doctrine under which a court may decline to exercise or postpone exercising its jurisdiction to adjudicate a matter, typically in the interests of comity and federalism. Several different forms of abstention have been recognized by the Supreme Court, including: (1) when the case would interfere with ongoing state criminal or civil proceedings, *see Younger v. Harris*, 401 U.S. 37 (1971); *Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423 (1982) (applying

Younger to noncriminal proceedings), (2) when the case is duplicative of a parallel state court proceeding, *see Romine v. Compuserve Corp.*, 160 F.3d 337, 341 (6th Cir. 1998) (describing the eight factors considered under the doctrine established by the Supreme Court in *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800 (1976)), (3) when a federal court can avoid a constitutional question by allowing the state courts to interpret an unclear or ambiguous state law, *see R.R. Comm'n of Tex. v. Pullman Co.*, 312 U.S. 496 (1941), and (4) when state review is available and either 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 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," *New Orleans Pub. Serv., Inc. v. Council of City of New Orleans*, 491 U.S. 350, 361 (1989) (quoting *Colorado River*, 424 U.S. at 814, and summarizing the *Burford* doctrine).

5. **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 5.

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

   Response: The Supreme Court has looked to the original public meaning of the Constitution's text on several occasions. The Supreme Court, for example, has held that originalism applies in Second Amendment cases as demonstrated by *Heller*, *McDonald*, and *Bruen*. In those cases, the Supreme Court reinforced the right of law-abiding persons to possess a handgun in the home and to carry one in public for self-defense. Originalism was also applied in *Crawford v. Washington*, a case involving the Confrontation Clause, where it was determined that the playing of a wife's recorded statement was a violation of the Sixth Amendment. I have never characterized myself based on a particular method of Constitutional interpretation. Originalism is one of the methods the Supreme Court has used to interpret certain Constitutional provisions. If I am confirmed as a district court judge, I will faithfully apply doctrine of originalism where mandated by binding Supreme Court and Sixth Circuit precedent.

7. **Do you consider legislative history when interpreting legal texts?**

   Response: Under Supreme Court precedent, statutory interpretation should start with the plain meaning of the text of the statute and legislative history should only be considered if the statute is ambiguous. *See Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005) ("As we have repeatedly held, the authoritative statement is the statutory text, not the legislative history or any other extrinsic material. Extrinsic materials have a role in statutory interpretation only to the extent they shed a reliable light on the enacting Legislature's understanding of otherwise ambiguous terms.").

   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 indicated that some legislative history may be more probative than others. For example, in *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005), the Court noted that "legislative materials like committee reports, which are not themselves subject to the requirements of Article I, may give unrepresentative committee members—or, worse yet, unelected staffers and lobbyists—both the power and the incentive to attempt strategic manipulations of legislative history to secure results they were unable to achieve through the statutory text."

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

      Response: The Supreme Court has consulted English law when interpreting the Constitution. *See District of Columbia v. Heller*, 554 U.S. 570 (2008) (Second Amendment); *Torres v. Madrid*, 141 S. Ct. 989 (2021) (Fourth Amendment). If confirmed, I would follow Supreme Court and Sixth Circuit precedent in interpreting the U.S. Constitution.

8. **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 Supreme Court and Sixth Circuit precedent, to successfully challenge an execution protocol, a plaintiff must (1) "establish that the method presents a risk that is *sure or very likely* to cause" serious pain and "needless suffering" and that (2) there is an alternative method that would "significantly reduce a substantial risk of severe pain" and is "available, feasible, and can be readily

implemented." *In re Ohio Execution Protocol*, 860 F.3d 881, 886 (6th Cir. 2017) (quoting *Glossip v. Gross*, 576 U.S. 863, 877 (2015)) (quotation marks omitted).

9. **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.

10. **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: Not that I am aware of. To the contrary, the Supreme Court held in *Dist. Attorney's Off. for Third Jud. Dist. v. Osborne*, 557 U.S. 52 (2009), that a habeas corpus petitioner does not have a substantive due process right to postconviction DNA evidence, and the Sixth Circuit echoed that holding in *In re Smith*, 349 F. App'x 12, 15 (6th Cir. 2009) ("[T]here is no freestanding substantive due process right to DNA testing.").

11. **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.

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 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: Under the First Amendment's Free Exercise Clause, laws that burden religion are first analyzed to determine if they are both neutral and generally applicable. *See Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531–32 (1993). Generally, under the First Amendment, "a law that is neutral and of general applicability need not be justified by a compelling governmental interest even if the law has the incidental effect of burdening a particular religious practice." *Id.* at 531. But if a law's burden on free exercise is not neutral and generally applicable to all individuals regardless of religion—that is, if it

discriminates based on religion—the law must withstand strict scrutiny analysis to pass constitutional muster. To withstand strict scrutiny, a law "must be justified by a compelling governmental interest" and "narrowly tailored to advance that interest." *Id*.

The government may also be subject restrictions imposed by statutes such as the Religious Land Use and Initialized Persons Act ("RLUIPA") and the Religious Freedom Restoration Act ("RFRA"). These statutes "aim to ensure 'greater protection for religious exercise than is available under the First Amendment,'" *Ramirez v. Collier*, 142 S. Ct. 1264, 1277 (2022), by subjecting even laws of general applicability to strict scrutiny. As described by the Court in *Ramirez*, which assessed a claim under RLUIPA, the plaintiff bears the initial burden of proving a substantial burden on free exercise; the burden then shifts to the government to "'demonstrate[] that imposition of the burden on that person' is the least restrictive means of furthering a compelling governmental interest." *Id.* at 1277.

If confirmed, I will faithfully follow all binding Supreme Court and Sixth Circuit precedent, which in addition to the above cases include *Tandon v. Newsom,* 141 S. Ct. 1294 (2021), *Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2021); *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2018); and *Maryville Baptist Church, Inc. v. Beshear*, 957 F.3d 610, 615 (6th Cir. 2020) ("[COVID] restrictions inexplicably applied to one group and exempted from another do little to further [Defendants'] goals and do much to burden religious freedoms.").

13. 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 12.

14. 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: In *Ackerman v. Washingto*n, 16 F.4th 170 (6th Cir. 2021), the Sixth Circuit explained the standard for determining sincerity under the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), the "sister statute" of the Religious Freedom Restoration Act ("RFRA"), *id.* at 180 n.5:

> The sincerity prong just requires courts "'to determine whether the line drawn' by the plaintiff between conduct consistent and

> inconsistent with her or his religious beliefs 'reflects an honest conviction.'" Because "[s]incerity is distinct from reasonableness," courts do not inquire into whether a belief is "mistaken or insubstantial" even under the religious system to which the [plaintiff] claims to adhere. . . . [T]he sincerity requirement is just a "credibility assessment" that asks if a [plaintiff's] religious belief is honest.
>
> . . . . Courts need not take a [plaintiff] at his word and can "filter out insincere requests." That means that even though "sincerity rather than orthodoxy is the touchstone, [an actor] still is entitled to give *some* consideration to an organization's tenets" in assessing credibility. "For the more a person's professed beliefs differ from the orthodox beliefs of his faith, the less likely they are to be sincerely held." And it also means that courts can consider factors like length of adherence, knowledge about the belief system, and the existence of religious literature and teachings supporting the belief. Whether [plaintiffs] have "wavered in their dedication" also appears to be relevant to the sincerity analysis. But this does not mean a religious observer "forfeit[s] his religious rights merely because he is not" completely "scrupulous in his observance; for where would religion be without its backsliders, penitents, and prodigal sons?" "[E]ven the most sincere practitioner may stray from time to time."

Id. at 180–81 (6th Cir. 2021) (citations and footnote omitted).

15. 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: In *Heller*, the Supreme Court overturned a District of Columbia law that required firearms in the home to be locked or disassembled and completely banned handguns from the home. The majority held that the Second Amendment "guarantee[s] the individual right to possess and carry weapons in case of confrontation." *Heller*, 554 U.S. at 592. Although this right is "not unlimited" and is "not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose," it does protect against a blanket ban of "an entire class of 'arms' that is overwhelming chosen by American society for that lawful purpose [of self-defense]." *Id.* at 626, 628.

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.

16. 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: I believe Justice Holmes meant what he restated later in the same paragraph: that the Constitution "is not intended to embody a particular economic theory," such as the laissez-faire system that I understand Herbert Spencer to have advocated. *Lochner v. New York*, 198 U.S. 45 (1905) (Holmes, J., dissenting).

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

Response: As a sitting bankruptcy judge and district court nominee, it would be inappropriate for me to comment as to whether this case was correctly decided. I am, and as a district judge would be, bound to follow Supreme Court (and Sixth Circuit) precedent, and I will faithfully do so.

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

Response: No.

a. If so, what are they?

Response: Please see my response to Question 17 above.

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

Response: I do.

18. 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: As a sitting bankruptcy judge and district court nominee, it would be inappropriate for me to express my personal views as to Judge Learned Hand's comments. I am, and as a district judge would be, bound to follow Supreme Court and Sixth Circuit precedent, and I will faithfully do so.

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

Response: Please see my response to Question 18(a).

c. 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: It is my understanding that there is no exact percentage of market share at which a company is conclusively deemed a monopoly, but that market share is instead one factor to consider and could give rise to a presumption of a monopoly. See *Am. Council of Certified Podiatric Physicians & Surgeons v. Am. Bd. of Podiatric Surgery, Inc.*, 185 F.3d 606, 623 (6th Cir. 1999) ("[M]arket share is only a starting point for determining whether monopoly power exists, and the inference of monopoly power does not automatically follow from the possession of a commanding market share."); *PSI Repair Servs., Inc. v. Honeywell, Inc.*, 104 F.3d 811, 821 (6th Cir. 1997) ("While there is no magical percentage of market power that will qualify as monopoly power under § 2 [of the Sherman Act], the Supreme Court has concluded that an 87% share of the market and over two-thirds of the market both constitute monopoly power under § 2."). If confirmed, I will faithfully follow all Supreme Court and Sixth Circuit precedent on the Sherman Act and will impartially apply the law to the facts of the case before me.

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

Response: "Federal common law" has been defined as "[t]he body of decisional law derived from federal courts when adjudicating federal questions and other matters of federal concern, such as disputes between the states and foreign relations, but excluding all cases governed by state law," Common Law, Black's Law Dictionary (11th ed. 2019), or "a rule of decision that amounts, not simply to an interpretation of

a federal statute or a properly promulgated administrative rule, but, rather, to the judicial 'creation' of a special federal rule of decision," *Atherton v. F.D.I.C.*, 519 U.S. 213 (1997).

20. 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: I would defer to the interpretation of the state constitution given by the highest court of the state. *Wainwright v. Goode*, 464 U.S. 78, 84 (1983) ("[T]he views of the state's highest court with respect to state law are binding on the federal courts."); *West v. Am. Tel. & Tel. Co.*, 311 U.S. 223, 236 (1940) ("[T]he highest court of the state is the final arbiter of what is state law. . . . [and] its pronouncement is to be accepted by federal courts as defining state law unless it has later given clear and persuasive indication that its pronouncement will be modified, limited or restricted.").

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

Response: As a general principle, it makes sense to interpret identical texts identically. *See, e.g.*, *Nat'l Credit Union Admin. v. First Nat. Bank & Tr. Co.*, 522 U.S. 479, 501 (1998) (noting the "established canon of construction that similar language contained within the same section of a statute must be accorded a consistent meaning"); *Bragdon v. Abbott*, 524 U.S. 624, 645 (1998) ("When administrative and judicial interpretations have settled the meaning of an existing statutory provision, repetition of the same language in a new statute indicates, as a general matter, the intent to incorporate its administrative and judicial interpretations as well."). But this is not always the case, *see Yates v. United States*, 574 U.S. 528, 537 (2015) ("[I]dentical language may convey varying content when used in different statutes, sometimes even in different provisions of the same statute."), and as noted in my response to Question 20, if one of those texts were a state constitution or other state law, I would look to the interpretation given by the highest court of the state.

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

Response: Whether two identically worded constitutional provisions—one state and one federal—provide differing levels of protection might depend on how those provisions have been interpreted. *See Arizona v. Evans*, 514 U.S. 1, 8 (1995) ("[S]tate courts are absolutely free to interpret state constitutional

provisions to accord greater protection to individual rights than do similar provisions of the United States Constitution."). Generally, a state constitution may provide greater protections than those provided by the U.S. Constitution.

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

Response: Yes; *Brown v. Board of Education* is binding precedent of the Supreme Court and settled law. If I am fortunate enough to be confirmed as a district judge, I would be bound to follow this decision and all other Supreme Court (and Sixth Circuit) precedent, and I will faithfully do so. This decision involved an issue highly unlikely to be re-litigated.

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

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

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

Response to Question 22(a)–(b): District Courts have the power to issue injunctive relief under Federal Rule of Civil Procedure 65. There are numerous examples of nationwide injunctions being issued, and as I understand, there is substantial debate about the appropriateness of the scope of such injunctions. Nationwide injunctions have been sharply criticized by some Justices of the Supreme Court, *see Dep't of Homeland Sec. v. New York*, 140 S. Ct. 599, 599 (2020) (Gorsuch and Thomas, JJ., concurring), and recently, in a concurrence authored by Chief Judge Sutton of the Sixth Circuit, *Arizona v. Biden*, 40 F.4th 375, 395 (6th Cir. 2022) (Sutton, J., concurring). If confirmed and faced with a request to issue a nationwide injunction, I would carefully examine the law and the precedent—both binding and persuasive—of the Supreme Court and Sixth Circuit in deciding the matter.

23. 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: Please see my response to Question 22.

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

Response: The Constitution limits the powers of the federal government and reserves undelegated powers to the states or to the people. *See* U.S. Const. amend. X. Federalism ensures a balance of power between federal and state governments. *See Gregory v. Ashcroft*, 501 U.S. 452, 458 (1991) (Federalism "assures a decentralized government that will be more sensitive to the diverse needs of a heterogenous society; it increases opportunity for citizen involvement in democratic processes; it allows for more innovation and experimentation in government; and it makes government more responsive by putting the States in competition for a mobile citizenry.").

25. 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 4.

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

Response: An injunction is an equitable remedy that is typically only available when there is no adequate remedy at law. *See N. California Power Agency v. Grace Geothermal Corp.*, 469 U.S. 1306, 1306 (1984). The relative merits of each form of relief depends on the type of case at hand, including whether injunctive relief is even available. I am, and as a District Judge would be, bound to follow Supreme Court and Sixth Circuit precedent on the availability and appropriateness of different forms of damages, and I will faithfully do so.

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

Response: The Supreme Court has held that the Constitution protects certain unenumerated rights that are "deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty." *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2242 (2022) (quoting *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997)). The Court has held that "in addition to the specific freedoms protected by the Bill of Rights, the 'liberty' specially protected by the Due Process Clause includes the rights to marry; to have children; to direct the education and upbringing of one's children; to marital privacy; to use contraception; [and] to bodily integrity." *Glucksberg*, 521 U.S. at 719–20 (citations omitted). The Supreme Court held recently in *Dobbs* that "[t]he right to abortion does not fall within this category." *Dobbs*, 142 S. Ct. at 2242.

28. 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: Please see my response to Question 12.

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

Response: The Free Exercise Clause of the First Amendment encompasses not only freedom of worship but also freedom of religious beliefs. *See Lee v. Weisman*, 505 U.S. 577, 591 (1992) ("The Free Exercise Clause embraces a freedom of conscience and worship . . . ."). Because free exercise encompasses more than just worship, the two would not appear to be synonymous and coextensive.

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: Please see my response to Question 12.

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: Please see my response to Question 14.

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: RFRA "applies to all Federal law, and the implementation of that law, whether statutory or otherwise," but federal laws adopted after RFRA's enactment may be excluded from its application. 42 U.S.C. § 2000bb-3(a)–(b); *see also Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct. 2367, 2383 (2020) ("RFRA also permits Congress to exclude statutes from RFRA's protections."). With regard to employment, the Supreme Court in *Burwell v. Hobby Lobby Stores, Inc*., 134 S. Ct. 2751 (2014), held that RFRA's definition of a "person" includes for profit

corporations, that the contraceptives mandate substantially burdened the exercise of religion under RFRA, that the contraceptives mandate did not satisfy RFRA's least restrictive means requirement, and that the contraceptives mandate was therefore invalid.

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: No.

29. 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: I am unfamiliar with Justice Scalia's statement as quoted. If confirmed, I will carefully review the record in each case, impartially apply the law, and follow Supreme Court and Sixth Circuit precedent when rendering decisions in cases that come before me.

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

Response: Yes.

a. If yes, please provide appropriate citations.

Response: See *Justice v. Bureau of Workers' Comp*. (*In re Justice*), 224 B.R. 631 (Bankr. S.D. Ohio 1998).

31. 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. I have never used social media.

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

Response: I am very grateful to live in America and serve in one of the three Branches of Government. Respectfully, while this question raises an important societal concern, it is one that must be addressed by policymakers, academics,

researchers, and the public. If confirmed, I am committed to impartially apply the law in all cases and controversies that come before me, as I have done in my 26 years as a bankruptcy judge.

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

Response: Before becoming a United States Bankruptcy Court judge more than two decades ago, I strived as an advocate and trial lawyer to zealously and competently represent my clients. My personal or political views have always been irrelevant. I was able to achieve success in this regard by focusing all my energies and attention on the facts and the law that gave my clients the best opportunity for success in the litigation.

34. How did you handle the situation?

Response: Please see my response to Question 33.

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

Response: Yes.

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

Response: Federalist Paper 78 (Alexander Hamilton).

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

Response: As a sitting bankruptcy judge and district court nominee, it would be inappropriate for me to express my personal views on this matter. The Supreme Court has not taken a position on the matter. *See Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2261 (2022) ("Our opinion is not based on any view about if and when prenatal life is entitled to any of the rights enjoyed after birth.").

38. 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. I testified in a deposition for a case involving an auto accident. The name of the case is *Ronaldo S. Mesina, et al. v. Jeffery P. Hopkins, et al*., Case No.

AO906831 (July 16, 2009), filed in the Court of Common Pleas, Hamilton County, Ohio. I do not have a transcript of that testimony.

39. 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.

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

a. Apple?

Response: Not to my knowledge. My investments are all in mutual funds.

Amazon?

Response: Not to my knowledge. My investments are all in mutual funds.

b. Google?

Response: Not to my knowledge. My investments are all in mutual funds.

c. Facebook?

Response: Not to my knowledge. My investments are all in mutual funds.

d. Twitter?

Response: Not to my knowledge. My investments are all in mutual funds.

41. 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 41.

42. Have you ever confessed error to a court?

Response: No.

a. If so, please describe the circumstances.

Response: Please see my response to Question 42.

43. 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: I believe all nominees have a solemn obligation to state with candor their judicial philosophy and to be forthcoming when testifying before the Senate Judiciary Committee consistent with the Codes of Conduct for United States Judges and the oath office that all federal judges must take.

Questions from Senator Thom Tillis
for Jeffery Paul Hopkins
Nominee to be United States District Judge for the Southern District of Ohio

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: The term "judicial activism" has been defined as "[a] philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions, usu. with the suggestion that adherents of this philosophy tend to find constitutional violations and are willing to ignore governing texts and precedents," Judicial Activism, Black's Law Dictionary (11th ed. 2019), though it may be subject to different meanings depending on the audience. I do not consider judicial activism appropriate.

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

   Response: An expectation.

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

   Response: No.

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

   Response: I have served as a federal trial judge on the United States Bankruptcy Court for 26 years, seven years of which I served as Chief Judge. My personal and political views on the cases and controversies that have come before me have never affected my decision making and, if I am confirmed, will remain irrelevant to the outcome of any cases I am confronted with as a district court judge. Over the past two decades, I have applied the facts to the law and followed precedent established by the Supreme Court and Sixth Circuit without respect to my personal views. I am, and will, if confirmed as a judge on the District Court, continue to be bound by my solemn oath to "faithfully and impartially discharge and perform all of the duties incumbent upon me under the Constitution and laws of the United States," 28 U.S.C. § 453, and to follow Supreme Court and Sixth Circuit precedent, and I will do so.

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: In a trilogy of Second Amendment cases, the Supreme Court has held that an individual has the right to possess a handgun at home for self-defense, *see District of Columbia v. Heller*, 554 U.S. 570 (2008); that the right to possess a handgun for self-defense applies to states and their subdivisions, *see McDonald v. City of Chicago*, 561 U.S. 742 (2010); and that the right to "bear arms" under the Second Amendment permits the carrying of a firearm by law abiding citizens in public, *see New York Rifle and Association v. Bruen*, 142 S. Ct. 2111 (2022). I will apply all binding Supreme Court and Sixth Circuit precedent to cases involving the Second Amendment that come before me.

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: If confirmed, I would faithfully follow the Supreme Court's decisions in *Heller*, *McDonald*, and *Bruen*, and any Sixth Circuit precedent construing the Second Amendment. As a sitting bankruptcy judge and district court nominee, it would be inappropriate for me to opine on a hypothetical scenario. If I were to express my views on the remaining parts of the question, it might seem to a future litigant that I have prejudged the matter should one of these issues come before me.

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: It has been established that "[t]here are two general steps to a qualified immunity analysis. The court must determine whether 'the facts alleged show the officer's conduct violated a constitutional right' and whether that right was 'clearly established.'" *Robertson v. Lucas*, 753 F.3d 606, 615 (6th Cir. 2014) (citing *Saucier v. Katz*, 533 U.S. 194, 201-02 (2001)); *see also Pearson v. Callahan*, 555 U.S. 223 (2009). In *Saucier v. Katz*, 533 U.S. 194 (2001), the Supreme Court stated that "[w]here the defendant seeks qualified immunity, a ruling on that issue should be made early in the proceedings so that the costs and expenses of trial are avoided where the defense is dispositive." *Saucier v. Katz*, 533 U.S. 194, 200, (2001).. In the past 26 years that I have served as a United States Bankruptcy Court judge, I have not been faced with the question of when must a court grant qualified immunity. If confirmed, I would be bound to follow all precedent from the Supreme Court and Sixth Circuit on the matter of qualified immunity, and I will faithfully do so.

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 bankruptcy judge and district court nominee, it would be inappropriate for me to express my personal views on this issue. I am, and if confirmed would be, bound to follow Supreme Court and Sixth Circuit precedent on qualified immunity, and I will faithfully do so.

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

Response: As a sitting bankruptcy judge and district court nominee, it would be inappropriate for me to express my personal views on this issue. I am, and if confirmed would be, bound to follow Supreme Court and Sixth Circuit precedent on qualified immunity, and I will faithfully do so.

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

Response: As a sitting bankruptcy judge and district court nominee, it would be inappropriate for me to express my personal views on this issue. I am, and if confirmed would be, bound to follow Supreme Court and Sixth Circuit precedent on patent eligibility, including *Alice Corporation Pty. Ltd. v. CLS Bank International*, 573 U.S. 208 (2014), *Mayo Collaborative Services. v. Prometheus Laboratories, Inc.*, 566 U.S. 66 (2012), and *Bilski v. Kappos*, 561 U.S. 593 (2010), and I will faithfully do so.

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

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

Response: Respectfully, as a sitting bankruptcy judge and district court nominee, it would be inappropriate for me to opine as to the outcome of these hypothetical scenarios, especially when, if confirmed, such controversies could come before me. Opining on these hypothetical scenarios might give the impression to a future litigant that I have prejudged these matters. Under Canon 3(A)(6) of the Code of Conduct for United States Judges, "[a] judge should not make public comment on the merits of a matter pending or impending in any court." If confirmed, I would faithfully apply the law, including all Supreme Court and Sixth Circuit precedent on patent eligibility, such as *Alice Corporation Pty. Ltd. v. CLS Bank International*, 573 U.S.

208 (2014), *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66 (2012), and *Bilski v. Kappos*, 561 U.S. 593 (2010).

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

Response: Please see my response to Question 13(a).

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

Response: Please see my response to Question 13(a).

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

Response: Please see my response to Question 13(a).

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

Response: Please see my response to Question 13(a).

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

artificial intelligence implemented system does actually improve the expected result, what if it doesn't have any other meaningful limitations?

Response: Please see my response to Question 13(a).

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

Response: Please see my response to Question 13(a).

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

Response: Please see my response to Question 13(a).

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

Response: Please see my response to Question 13(a).

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

Response: Please see my response to Question 13(a).

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

Response: Please see my response to Question 13(a). If confirmed, I would faithfully apply the law, including all Supreme Court and Sixth Circuit precedent, to the facts of the case before me. It is up to the legislature to determine whether the current jurisprudence provides the clarity and consistency needed to incentivize innovation.

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

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

       Response: In my experience as a law clerk, in private practice, and as a bankruptcy judge for the past 26 years, I do not recall being involved in any copyright cases.

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

       Response: The Digital Millennium Copyright Act was enacted after I became a bankruptcy judge, and I am not aware of any cases involving it coming before me.

    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: While in private practice, and while serving as a law clerk on an Ohio court of appeals and in the Sixth Circuit, I was involved with several cases that dealt with First Amendment and free speech issues. As to my experience regarding intellectual property and copyright laws, however, please see my response to Question 15(a)–(c).

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

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

Response: The Supreme Court has held that statutory interpretation should begin with the text of the statute and that legislative history should be considered only if the statute is ambiguous. And the Supreme Court has suggested that, at least in some contexts, debate among courts about the meaning of a statute does not necessarily mean the statute is ambiguous. *See Reno v. Koray*, 515 U.S. 50, 64–65 (1995); *Moskal v. United States*, 498 U.S. 103, 108 (1990). If confirmed, I will follow Supreme Court and Sixth Circuit precedent in interpreting a statute and applying the law to the facts of the case before me.

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: If confirmed, I would look to the relevant Supreme Court and Sixth Circuit precedent in deciding what level of deference to give to the advice and analysis of a federal agency like the U.S. Copyright Office. *See Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984); *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944); *Varsity Brands, Inc. v. Star Athletica, LLC*, 799 F.3d 468, 479 (6th Cir. 2015) (holding that "the Copyright Office's determination that a design is protectable under the Copyright Act is entitled to *Skidmore* deference").

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: If confirmed, I would follow Supreme Court and Sixth Circuit precedent for what constitutes notice in copyright cases and apply the law to the facts of the case before me. As a sitting bankruptcy judge and district court nominee, it would be inappropriate for me to opine further.

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

a. How can judges best interpret and apply to today's digital environment laws like the DMCA that were written before the explosion of the internet, the

ascension of dominant platforms, and the proliferation of automation and algorithms?

Response: The Supreme Court has held that statutory interpretation should begin with the text of the statute and end there when its meaning is plain. If confirmed, I would faithfully apply the law, including binding Supreme Court and Sixth Circuit precedent, to the facts of the case before me. It is up to the legislature to determine whether today's digital environment necessitates any changes to the DMCA and other similar laws.

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: Please see my response to Question 17(b).

18. 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: In general, 28 U.S.C.§ 1391 governs venue of civil actions brought in United States District Courts, and 28 U.S.C. § 1404 governs the process by which a district court may transfer a civil action brought before it. It is the province of Congress to address any policy concerns regarding venue through the legislative process. As a sitting bankruptcy judge and district court nominee, it would be inappropriate for me to express my personal views on this issue. I am, and if confirmed would be, bound to follow Supreme Court and Sixth Circuit precedent on venue matters, and I will faithfully do so. Generally, the Western Division of the Southern District of Ohio randomly assigns each case to a resident district judge and magistrate judge. *See* General Order of Assignment and Reference, Southern District of Ohio, CIN 22-02 (With a few exceptions, "all civil and miscellaneous cases filed at the Cincinnati location of court shall be randomly assigned upon filing to one of the resident District Judges and one of the resident Magistrate Judges.").

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

Response: Respectfully, as a sitting bankruptcy judge and district court nominee, it would be inappropriate for me to express my personal views on this issue. I am, and if confirmed would be, bound to follow Supreme Court and Sixth Circuit precedent on venue matters, and I will faithfully do so. I commit to not taking proactive steps to attract particular type of case or litigant and I have not done so for the 26 years I have served as a United States Bankruptcy Court judge.

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: Respectfully, as a sitting bankruptcy judge and district court nominee, it would be inappropriate for me to express my personal views on this issue. I am, and if confirmed would be, bound to follow Supreme Court and Sixth Circuit precedent on venue matters, and I will faithfully do so. I commit to not taking proactive steps to attract a particular type of case or litigant and I have not done so for the 26 years I have served as a United States Bankruptcy Court judge.

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

Response: I am, and if confirmed would be, bound to follow Supreme Court and Sixth Circuit precedent on venue matters, and I will faithfully do so. I commit to not taking proactive steps to attract a particular type of case or litigant and I have not done so for the 26 years I have served as a United States Bankruptcy Court judge.

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

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

Response: Respectfully, I am unfamiliar with the facts or circumstances involved in the cases cited and therefore am unable to comment. I am, and if confirmed would be, bound to follow Supreme Court and Sixth Circuit precedent, and I will faithfully do so.

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

Response: Respectfully, as a sitting bankruptcy judge and district court nominee, it would be inappropriate for me to express my personal views on this issue. I am, and

if confirmed would be, bound to follow Supreme Court and Sixth Circuit precedent on this and all other matters, and I will faithfully do so.

20. 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?

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: In my role as a United States Bankruptcy Court judge for the past 26 years, I have not had occasion to consider the important matters of the procedures or local rules that govern areas outside of the Bankruptcy Court's jurisdiction. I am, and if confirmed would be, bound to follow Supreme Court and Sixth Circuit precedent in deciding matters related to venue, and I will faithfully do so.

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?

Response: Please see my response to Question 20(a).

21. 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 bankruptcy judge and district court nominee, it would be inappropriate for me to express my personal views on this issue. I am, and if confirmed would be, bound to follow Supreme Court and Sixth Circuit precedent on this and all other matters, and I will faithfully do so.

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

Response: Please see my response to Question 21(a).