Senator Chuck Grassley, Ranking Member
Questions for the Record
The Honorable Fred Slaughter
Judicial Nominee to the United States District Court for the Central District of California

1. **In the context of federal case law, what is the academic or scholarly definition of super precedent? Which cases, if any, count as super precedent?**

   Response: During my career as an attorney and currently as sitting judge on the Orange County Superior Court, I have not become familiar with the term "super precedent," and I am not aware of that term being used by United States Supreme Court or the Ninth Circuit Court of Appeals.

2. **You can answer the following questions yes or no:**

   a. **Was *Brown v. Board of Education* correctly decided?**
   b. **Was *Loving v. Virginia* correctly decided?**
   c. **Was *Griswold v. Connecticut* correctly decided?**
   d. **Was *Roe v. Wade* correctly decided?**
   e. **Was *Planned Parenthood v. Casey* correctly decided?**
   f. **Was *Gonzales v. Carhart* correctly decided?**
   g. **Was *District of Columbia v. Heller* correctly decided?**
   h. **Was *McDonald v. City of Chicago* correctly decided?**
   i. **Was *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* correctly decided?**
   j. **Was *Sturgeon v. Frost* correctly decided?**
   k. **Was *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission* correctly decided?**

   Response: As a sitting judge on the Orange County Superior Court, and now as a nominee for the federal district court, it is not generally appropriate for me to comment or have an opinion on the correctness of legal precedent such as the cases listed above. Instead, as a sitting judge, and if confirmed as a federal district court judge, it is my duty to apply binding precedent to the cases or controversies that come before me. However, I do agree with prior judicial nominees that *Brown v. Board of Education* and *Loving v. Virginia* were correctly decided as those cases establish foundational legal principles that are unlikely to be litigated in any case that comes before me.

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

   Response: I am not aware of or familiar with Judge Jackson's statement or the circumstances or context in which Judge Jackson made the statement. The definition of

the doctrine of living constitutionalism in Black's Law Dictionary (11th ed. 2019) is as follows: "The doctrine that the Constitution should be interpreted and applied in accordance with changing circumstances and, in particular, with changes in social values. While many authorities use the terms living constitutionalism and nonoriginalism interchangeably, others view living constitutionalism as a form of nonoriginalism that values interpretive conformity with changed circumstances and norms more greatly than do other forms of nonoriginalism." As a sitting judge, I apply legal precedent when analyzing issues of constitutional interpretation, and if confirmed as a federal district court judge, I will continue to do the same.

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

   Response: As a sitting judge, I am not familiar with the term "social equity" being utilized in Ninth Circuit or Supreme Court precedent. As a sitting judge, and if confirmed as a federal district court judge, and the issue of "social equity" comes before me in a case or controversy, I would prepare for the matter, research the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

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

   Response: I am not familiar with this particular statement, who made the statement, or the circumstances and context in which the statement was made. As a sitting judge, and if confirmed as a federal district judge, I will continue to prepare for each matter, research the law, read pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts. My personal views and opinions are not relevant or appropriate to apply to the judicial process.

6. **Is climate change real?**

   Response: As a sitting judge and a judicial nominee, it is not appropriate for me to prejudge any issue that might come before me as a case or controversy. As a sitting judge, and if confirmed as a federal district court judge, and this issue comes before me as a case or controversy, I will prepare for the matter, research the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

7. **Do parents have a constitutional right to direct the education of their children?**

Response: The Supreme Court has explained, "More than 75 years ago, in *Meyer v. Nebraska*, 262 U.S. 390, 399, 401, 43 S. Ct. 625, 67 L. Ed. 1042 (1923), we held that the 'liberty' protected by the Due Process Clause includes the right of parents to 'establish a home and bring up children' and 'to control the education of their own.' " *Troxel v. Granville*, 530 U.S. 57, 65 (2000). "Two years later, in *Pierce v. Society of Sisters*, 268 U.S. 510, 534–535, 45 S. Ct. 571, 69 L. Ed. 1070 (1925), we again held that the 'liberty of parents and guardians' includes the right 'to direct the upbringing and education of children under their control.'" *Id*. As a sitting judge, and if confirmed as a federal district court judge, and an issue regarding a parent's constitutional right to direct the education of their children comes before me as a case or controversy, I will apply the applicable law to the individual facts of the case to render my decision.

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

Response: As a sitting judge and a judicial nominee, it is not appropriate for me to prejudge any issue that might come before me. As a sitting judge, and if confirmed as a federal district court judge, and this issue comes before me in a case or controversy, I would prepare for the matter, research the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

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

Response: As a sitting judge and a judicial nominee, it is not appropriate for me to prejudge any issue that might come before me. As a sitting judge, and if confirmed as a federal district court judge, and this issue came before me in a case or controversy, I would prepare for the matter, research the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

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

Response: As a sitting judge and a judicial nominee, it is not appropriate for me to prejudge any issue that might come before me. As a sitting judge, and if confirmed as a federal district court judge, and this issue comes before me in a case or controversy, I would prepare for the matter, research the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

11. Can someone change his or her biological sex?

Response: As a sitting judge and a judicial nominee, it is not appropriate for me to prejudge any issue that might come before me. As a sitting judge, and if confirmed as a federal district court judge, and this issue comes before me in a case or

controversy, I would prepare for the matter, research the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

12. Is threatening Supreme Court justices right or wrong?

Response: I understand the question asked to be whether threatening a Supreme Court Justice is against the law. Title 18, United States Code, Section 115 concerns alleged threats (amongst other conduct) against certain federal officials, including federal judges. As a sitting judge and a judicial nominee, it is not appropriate for me to prejudge any issue that might come before me. If confirmed as a federal district court judge, and this issue comes before me in a case or controversy, I would prepare for the matter, research the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

13. Does the president have the power to remove senior officials at his pleasure?

Response: As a sitting judge and a judicial nominee, it is not appropriate for me to prejudge any issue that might come before me. As a sitting judge, and if confirmed as a federal district court judge, and this issue comes before me in a case or controversy, I would prepare for the matter, research the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

14. Do you believe that we should defund or decrease funding for police departments and law enforcement, including the law enforcement entities responsible for protecting the federal courthouses in Portland from violent rioters? Please explain.

Response: It is for policy makers to decide the funding for police departments and law enforcement agencies. As a sitting judge and a judicial nominee, it is not appropriate for me to prejudge any issue that might come before me. As a sitting judge, and if confirmed as a federal district court judge, and this issue comes before me in a case or controversy, I would prepare for the matter, research the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

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

Response: It is for policy makers to decide the funding of police departments and other support services. As a sitting judge and a judicial nominee, it is not appropriate for me to prejudge any issue that might come before me. As a sitting judge, and if confirmed as a

federal district court judge, and this issue comes before me in a case or controversy, I would prepare for the matter, research the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

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

Response: As a sitting judge and a judicial nominee, it is not appropriate for me to prejudge any issue that might come before me. As a sitting judge, and if confirmed as a federal district court judge, and this issue comes before me in a case or controversy, I would prepare for the matter, research the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

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

Response: If I am confirmed as a federal district court judge in the Central District of California, I would follow and be bound by Supreme Court and Ninth Circuit precedent. In several cases, including *United States v. Chovan*, 735 F.3d 1127 (9th Cir. 2013), *Jackson v. City and County of San Francisco*, 746 F.3d 953 (9th Cir. 2014), *Silvester v. Harris*, 843 F.3d 816 (9th Cir. 2016), *Duncan v. Bonta*, 19 F.4th 1087 (9th Cir. 2021) and *Young v. Hawaii*, 992 F.3d 765 (9th Cir. 2021), the Ninth Circuit has described the two-part test that it applies after the Supreme Court decision in *District of Columbia v. Heller*, 554 U.S. 570 (2008) ("*Heller*"). The first part of the two-part test in the Ninth Circuit Court of Appeals states: (1) "First, we ask if the challenged law affects conduct that is protected by the Second Amendment[, and] [w]e base that determination on the historical understanding of the scope of the right." *Young*, 992 F.3d at 783 (citations and internal quotation marks omitted). The second part of the two-part test states: "If the challenged restriction burdens conduct protected by the Second Amendment—either because 'the regulation is neither outside the historical scope of the Second Amendment, nor presumptively lawful'—we move to the second step of the analysis and determine the appropriate level of scrutiny. *Id*. at 784 (citation omitted.) In applying the second prong of the two-part test, the Ninth Circuit, in reliance on *Heller*, "require[s] one of three levels of scrutiny: If a regulation 'amounts to a destruction of the Second Amendment right,' it is unconstitutional under any level of scrutiny; a law that 'implicates the core of the Second Amendment right and severely burdens that right' receives strict scrutiny; and in other cases in which Second Amendment rights are affected in some lesser way, we apply intermediate scrutiny. *Id*. (citation omitted.)

18. Do state school-choice programs make private schools state actors for the purposes of the Americans with Disabilities Act?

Response: I am not aware of any United States Supreme Court or Ninth Circuit precedent that definitively answers this question, and this particular issue has not come before me during my time as an Orange County Superior Court judge. As a sitting judge and a judicial nominee, it is not appropriate for me to prejudge any issue that might come before me. As a sitting judge, and if confirmed as a federal district court judge, and this issue comes before me in a case or controversy, I would prepare for the matter, research the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

19. Does a law restrict abortion access if it requires doctors to provide medical care to children born alive following failed abortions?

Response: As a sitting judge and a judicial nominee, it is not appropriate for me to prejudge any issue that might come before me. As a sitting judge, and if confirmed as a federal district court judge, and this issue comes before me in a case or controversy, I would prepare for the matter, research the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

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

a. Who decides whether a burden exists on the exercise of religion, the government or the religious adherent?

Response: In a case or controversy under this or any other statute, the court hearing the matter would make the decision on whether the claim is successful under the law.

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

Response: In *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014), the Supreme Court "ask[ed] whether the HHS contraceptive mandate 'substantially burden[s]' the exercise of religion" and the Supreme Court concluded, "[w]e have little trouble concluding that it does." (*Id*. at 719.) More specifically, in terms of the substantial burden, the Supreme Court observed "the HHS mandate demands that they engage in conduct that seriously violates their religious beliefs," "the economic consequences will be severe," an alternative course "would also entail substantial economic consequences," and the remaining options would be "costly." *Id*. at 720-722. The Supreme Court also noted, "We doubt that the

Congress that enacted RFRA—or, for that matter, ACA—would have believed it a tolerable result to put family-run businesses to the choice of violating their sincerely held religious beliefs or making all of their employees lose their existing healthcare plans." *Id*. at 723.

As a sitting judge, and if confirmed as a federal district court judge, and this issue comes before me in a case or controversy, I would prepare for the matter, research the law, read pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

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

Response: I am not familiar with Judge Reinhardt's statement or the circumstances or context in which Judge Reinhardt made the statement. As a sitting judge, and if confirmed as a federal district judge, I will continue to prepare for each matter, research the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

22. As a matter of legal ethics do you agree with the proposition that some civil clients don't deserve representation on account of their identity?

Response: As a sitting judge in the Orange County Superior Court, and if confirmed, it would be inappropriate for me to comment on whether some civil clients do not serve representation on account of their identity. My duty as a judge is to interpret and apply the law to the individual facts of the case or controversy pending before me. My personal views and opinions are not relevant or appropriate to apply to the judicial process.

23. Do Blaine Amendments violate the Constitution?

Response: In *Espinoza v. Montana Department of Revenue*, 140 S. Ct. 2246 (2020), the United States Supreme Court considered whether a state-based scholarship program that provided public funds for students to attend private schools but prohibited families from using the funds at religious schools was constitutional. The Supreme Court held "[t]he application of the no-aid provision discriminated against religious schools and the families whose children attend or hope to attend them in violation of the Free Exercise Clause of the Federal Constitution." *Id*. at 2249. In the decision, the Supreme Court stated, "the Blaine Amendment was 'born of bigotry' and 'arose at a time of pervasive hostility to the Catholic Church and to Catholics in general'; many of its state counterparts have a similarly 'shameful pedigree'" and "[t]he no-aid provisions of the 19th century hardly evince a tradition that should inform our understanding of the Free

Exercise Clause." *Id*. at 2259 (citations omitted). As a sitting judge in Orange County Superior Court, and if confirmed as a federal district court judge, in deciding cases or controversies, I apply the applicable law, including binding Supreme Court interpretation of the First Amendment, to the individual facts before me.

24. Is the right to petition the government a constitutionally protected right?

Response: In *McDonald v. Smith*, 472 U.S. 479, 482 (1985), the Supreme Court explained, "The First Amendment guarantees 'the right of the people ... to petition the Government for a redress of grievances" and "[t]he right to petition is cut from the same cloth as the other guarantees of that Amendment, and is an assurance of a particular freedom of expression."

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

Response: In *Cohen v. California*, 403 U.S. 15, 20 (1971), citing to *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942), the Supreme Court observed "the States are free to ban the simple use, without a demonstration of additional justifying circumstances, of so-called 'fighting words,' those personally abusive epithets which, when addressed to the ordinary citizen, are, as a matter of common knowledge, inherently likely to provoke violent reaction."

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

Response: The Supreme Court has stated, "'True threats' encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals." *Virginia v. Black*, 538 U.S. 343, 359 [citations omitted]. "The speaker need not actually intend to carry out the threat." (*Id*. at 359-60.) "Rather, a prohibition on true threats 'protect[s] individuals from the fear of violence' and 'from the disruption that fear engenders,' in addition to protecting people 'from the possibility that the threatened violence will occur.'" (*Id*. at 360 [citation omitted].)

27. 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.

28. **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.

29. **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? 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.

Response: No.

b. **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, the Hopewell Fund, the Windward Fund, or any other such Arabella dark-money fund that is still shrouded.**

Response: No.

c. **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, the Hopewell Fund, the Windward Fund, or any other such Arabella dark-money fund that is still shrouded.**

Response: No.

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

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

Response: No.

b. **Are you currently in contact with anyone associated with the Open Society Foundations?**

Response: No.

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

Response: No.

31. 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.

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: On March 12, 2021, I submitted an application for a position on the United States District Court for the Central District of California to Senators Dianne Feinstein and Alex Padilla. On April 29, 2021, I interviewed with Senator Feinstein's Central District Judicial Advisory Committee. On May 25, 2021, I interviewed with the Statewide Chair for Senator Feinstein's Judicial Advisory Process. On August 23, 2021, I interviewed with attorneys from the White House Counsel's Office. From August 23, 2021, until my nomination on December 15, 2021, I was in contact with officials from the White House Counsel's Office and the Office of Legal Policy at the United States Department of Justice.

33. During your selection process did you talk with any officials from or anyone directly associated with the organization Demand Justice, or did anyone do so on your behalf? If so, what was the nature of those discussions?

Response: No.

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

Response: No.

35. During your selection process, did you talk with any officials from or anyone directly associated with Arabella Advisors, or did anyone do so on your behalf? If so, what was the nature of those discussions? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.

Response: No.

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

Response: No.

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

Response: No.

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

Response: On August 23, 2021, I interviewed with attorneys from the White House Counsel's Office. From August 23, 2021, until my nomination on December 15, 2021, I was in contact with officials from the White House Counsel's Office and the Office of Legal Policy at the United States Department of Justice. On December 15, 2021, my nomination was submitted to the Senate. Since my nomination date, I have been in contact with lawyers from the Office of Legal Policy and the White House Counsel's Office regarding my confirmation hearing and the ongoing process. On January 19, 2022, I received Questions for the Record from an official from the Office of Legal Policy.

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

Response: I received these questions during the afternoon on January 19, 2022. I drafted answers to each question based on conducting legal research and based on my own knowledge. Thereafter, I submitted a draft of my answers to the U.S. Department of Justice Office of Legal Policy to receive feedback, and, after considering the feedback I received, I submitted my finalized answers for submission on January 31, 2022.

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

Questions for the Record for Fred Wallace Slaughter, Nominee for the Central District of California

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. 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: As a sitting judge, I would summarize my judicial philosophy as follows: (1) I prepare for each case or controversy that comes before me; (2) I do not prejudge cases; (3) I hear each case with an open mind, I read the pleadings of the parties, and I listen to the parties; (4) I follow the applicable law and precedent; (5) I apply the applicable law to the

individual facts of the case; (6) I treat the parties respectfully, kindly, and with patience. I am not familiar with nor have I studied the judicial philosophies of the named Justices in the question above and thus cannot identify which is most analogous with mine.

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

Response: The United States Supreme Court in *District of Columbia v. Heller*, 554 U.S. 570, 576-77 (2008), provided description of originalism:

> In interpreting this text, we are guided by the principle that "[t]he Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning." *United States v. Sprague*, 282 U.S. 716, 731, 51 S. Ct. 220, 75 L. Ed. 640 (1931); see also *Gibbons v. Ogden*, 9 Wheat. 1, 188, 6 L. Ed. 23 (1824). Normal meaning may of course include an idiomatic meaning, but it excludes secret or technical meanings that would not have been known to ordinary citizens in the founding generation.

The definition of originalism in Black's Law Dictionary (11th ed. 2019) is as follows: "1. The doctrine that words of a legal instrument are to be given the meanings they had when they were adopted; specif., the canon that a legal text should be interpreted through the historical ascertainment of the meaning that it would have conveyed to a fully informed observer at the time when the text first took effect. . . . . 2. The doctrine that a legal instrument should be interpreted to effectuate the intent of those who prepared it or made it legally binding." As a sitting Orange County Superior Court, and, if confirmed as a federal district court judge, I have the duty and obligation to not prejudge any case or controversy that may come before me, and to remain open-minded, fair, and impartial in every matter. Thus, I do not characterize myself with any labels, but instead decide each case or controversy before me based on the applicable law as applied to the individual facts of the matter.

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

Response: I am not familiar with any case law defining the term "living constitutionalism," and have not encountered that terminology as an attorney or as a sitting judge in the matters that have come before me. Living constitutionalism is defined in Black's Law Dictionary (11th ed. 2019) as follows: "The doctrine that the Constitution should be interpreted and applied in accordance with changing circumstances and, in particular, with changes in social values. While many authorities use the terms living constitutionalism and nonoriginalism interchangeably, others view living constitutionalism as a form of nonoriginalism that values interpretive conformity with changed circumstances and norms more greatly than do other forms of nonoriginalism." As a sitting Orange County Superior Court, and, if confirmed as a federal district court

judge, I have the duty and obligation to not prejudge any case or controversy that may come before me, and to remain open-minded, fair and impartial in every matter. Thus, I do not characterize myself with any labels, but instead decide each case or controversy before me based on the applicable law as applied to the individual facts of the matter.

4. 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: If confirmed as a federal district court judge for the Central District of California, I would be bound by Supreme Court and Ninth Circuit precedent in deciding constitutional issues, including constitutional issues of first impression. Even though not every constitutional question has been considered by the Supreme Court, it has provided guidance for deciding many constitutional provisions, including the use of original public meaning for some of the terms in the Constitution. See, e.g. *District of Columbia v. Heller*, 554 U.S. 570, 576-77 (2008) (stating "in interpreting this text, we are guided by the principle that '[t]he Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning," and "[n]ormal meaning may of course include an idiomatic meaning, but it excludes secret or technical meanings that would not have been known to ordinary citizens in the founding generation").

As a sitting Orange County Superior Court, and, if confirmed as a federal district court judge, I have the duty and obligation to not prejudge any case or controversy that may come before me, and to remain open-minded, fair, and impartial in every matter. As a sitting judge, and if confirmed as a federal district court judge, and a constitutional issue of first impression comes before me in a case or controversy where the Supreme Court has previously relied on original public meaning, I will prepare for the matter, research the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

5. 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: The Supreme Court has held in certain decisions that while core constitutional principles remain the same, the application of some provisions may be based on "contemporary community standards." See, e.g., *Miller v. California*, 413 U.S. 15, 24 (1973) (including "contemporary community standards" as a factor in the determination of obscene material). As a sitting Orange County Superior Court, and, if confirmed as a federal district court judge, I have the duty and obligation to not prejudge any case or controversy that may come before me, and to remain open-minded, fair and impartial in every matter. As a sitting judge, and if confirmed as a federal district court judge, and the issue raised by this question comes before me in a case or controversy, I will prepare for

the matter, research the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

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

Response: Article V of the Constitution provides the process for amending the Constitution, as follows:

> The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

As a sitting Orange County Superior Court, and, if confirmed as a federal district court judge, I have the duty and obligation to not prejudge any case or controversy that may come before me, and to remain open-minded, fair, and impartial in every matter. As a sitting judge, and if confirmed as a federal district court judge, and the issue raised by this question comes before me in a case or controversy, I will prepare for the matter, research the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

7. 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: The limits on what the government may impose or require of private institutions, whether it is a religious organization or a small business operated by observant owners, would depend on the specific facts presented in the case or controversy. There are multiple areas of legal authority that may assist in the analysis depending on the case facts. A first area is provided by the Religious Freedom Restoration Act ("RFRA") and was described in *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 694-95 (2014) (footnotes omitted) as follows:

> In order to ensure broad protection for religious liberty, RFRA provides that "Government shall not substantially burden a person's exercise of religion even if

> the burden results from a rule of general applicability." § 2000bb–1(a). If the Government substantially burdens a person's exercise of religion, under the Act that person is entitled to an exemption from the rule unless the Government "demonstrates that application of the burden to the person—(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." § 2000bb–1(b).

RFRA applies to the actions of the federal government, and not to state governments. *City of Boerne v. Flores*, 521 U.S. 507, 536 (1997). In *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct. 2367 (2020), the Supreme Court applied RFRA to a religious organization. In *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014), the Supreme Court applied RFRA to a business operated by religious observant owners.

A second area of law regarding limits occurs where RFRA is not applicable. For instance, the Supreme Court has "stated that the Free Exercise Clause 'does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability' on the ground that following the law would interfere with religious practice or belief." *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Com'n*, 138 S. Ct. 1719, 1727 (2018) (citation omitted); see also *Employment Div., Dept. of Human Resources of Oregon v. Smith*, 494 U.S. 872, 879 (1990) (noting "the right of free exercise does not relieve an individual of the obligation to comply with a "valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes)").

In *Epperson v. State of Ark.*, 393 U.S. 97, 103-04 (1968), the Supreme Court described the requirement of government neutrality with respect to religion:

> Government in our democracy, state and national, must be neutral in matters of religious theory, doctrine, and practice. It may not be hostile to any religion or to the advocacy of noreligion; and it may not aid, foster, or promote one religion or religious theory against another or even against the militant opposite. The First Amendment mandates governmental neutrality between religion and religion, and between religion and nonreligion.

"[L]aws incidentally burdening religion are ordinarily not subject to strict scrutiny under the Free Exercise Clause so long as they are neutral and generally applicable." *Fulton v. City of Philadelphia, Pennsylvania*, 141 S. Ct. 1868, 1876 (2021). The "[g]overnment fails to act neutrally when it proceeds in a manner intolerant of religious beliefs or restricts practices because of their religious nature." *Id*. at 1877. "A law is not generally applicable if it invite[s] the government to consider the particular reasons for a person's conduct by providing a mechanism for individualized exemptions." *Id*. (citation and internal quotation marks omitted).

In addition, "[a]t a minimum, the protections of the Free Exercise Clause pertain if the law at issue discriminates against some or all religious beliefs or regulates or prohibits conduct

because it is undertaken for religious reasons." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 532 (1993). "Although a law targeting religious beliefs as such is never permissible, [citations] if the object of a law is to infringe upon or restrict practices because of their religious motivation, the law is not neutral, [citation]; and it is invalid unless it is justified by a compelling interest and is narrowly tailored to advance that interest." *Id*. at 533.

In *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049, 2052 (2020), the Supreme Court held that the "First Amendment's Religion Clauses foreclose[d] the adjudication" of an employment discrimination case involving teachers at a religious organization. The Supreme Court noted that "courts are bound to stay out of employment disputes involving those holding certain important positions with churches and other religious institutions," and examined the "ministerial exception" set forth in *Hosanna-Tabor Evangelical Lutheran Church and School v. E.E.O.C.*, 565 U.S. 171 (2012). *Id*. at 2060-65.

As a sitting Orange County Superior Court, and, if confirmed as a federal district court judge, I have the duty and obligation to not prejudge any case or controversy that may come before me, and to remain open-minded, fair, and impartial in every matter. As a sitting judge, and if confirmed as a federal district court judge, and any issue raised by this question comes before me in a case or controversy, I will prepare for the matter, research the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

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

Response: In *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993), the Supreme Court stated "[a] law burdening religious practice that is not neutral or not of general application must undergo the most rigorous of scrutiny." In *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1877 (2021), the Supreme Court indicated that the "[g]overnment fails to act neutrally when it proceeds in a manner intolerant of religious beliefs or restricts practices because of their religious nature." In *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021) (emphasis in original), the Supreme Court stated that "…government regulations are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat *any* comparable secular activity more favorably than religious exercise."

As a sitting Orange County Superior Court, and if confirmed as a federal district court judge, I have the duty and obligation to not prejudge any case or controversy that may come before me, and to remain open-minded, fair, and impartial in every matter. As a sitting judge and if confirmed as a federal district court judge, and this issue raised by this question comes before me in a case or controversy, I will prepare for the matter, research

the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

9. 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 church and synagogue applicants were entitled to a preliminary injunction. *Id*. at 66. The Supreme Court held "[t]he applicants … clearly established their entitlement to relief pending appellate review," and "[t]hey have shown that their First Amendment claims are likely to prevail, that denying them relief would lead to irreparable injury, and that granting relief would not harm the public interest." *Id*. The Supreme Court observed that "[b]ecause the challenged restrictions are not 'neutral' and of 'general applicability,' they must satisfy 'strict scrutiny,' and this means that they must be 'narrowly tailored' to serve a 'compelling' state interest." *Id*. at 67. The Supreme Court found "it is hard to see how the challenged regulations can be regarded as 'narrowly tailored.' " *Id*. The Supreme Court stated, "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Id*. (citation omitted.) The high court also found, "it has not been shown that granting the applications will harm the public." *Id*. at 68.

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

Response: In *Tandon v. Newsom*, 141 S. Ct. 1294, 1297 (2021), the Supreme Court held, in the context of injunctive relief, that California's "Blueprint System for restrictions on private gatherings during COVID-19 pandemic" violated the First Amendment rights of the injunction applicants who wished to gather for at-home religious exercise. The Supreme Court held that the "applicants are entitled to an injunction pending appeal" because "[a]pplicants are likely to succeed on the merits of their free exercise claim; they are irreparably harmed by the loss of free exercise rights "for even minimal periods of time;" and the State has not shown that "public health would be imperiled" by employing less restrictive measures." *Id*. at 1297.

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

Response: The Free Exercise Clause of the First Amendment, which has been applied to the States through the Fourteenth Amendment, [citation], provides that "Congress shall

make no law respecting an establishment of religion, or prohibiting the free exercise thereof...." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531 (1993). "In our Establishment Clause cases we have often stated the principle that the First Amendment forbids an official purpose to disapprove of a particular religion or of religion in general." *Id*. at 532. "At a minimum, the protections of the Free Exercise Clause pertain if the law at issue discriminates against some or all religious beliefs or regulates or prohibits conduct because it is undertaken for religious reasons." *Id*. Although a law targeting religious beliefs as such is never permissible, [citations] if the object of a law is to infringe upon or restrict practices because of their religious motivation, the law is not neutral, [citation]; and it is invalid unless it is justified by a compelling interest and is narrowly tailored to advance that interest. *Id*. at 533.

As a sitting Orange County Superior Court, and, if confirmed as a federal district court judge, I have the duty and obligation to not prejudge any case or controversy that may come before me, and to remain open-minded, fair, and impartial in every matter. As a sitting judge, and if confirmed as a federal district court judge, and this issue raised by this question comes before me in a case or controversy, I will prepare for the matter, research the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

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

Response: *In Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2018), the Supreme Court held the Colorado Civil Rights Commission did not comply with the Free Exercise Clause's requirement of religious neutrality in a matter arising from a cakeshop's refusal to sell a wedding cake to a same-sex couple on religious grounds. The Supreme Court stated, "[t]he Commission's hostility was inconsistent with the First Amendment's guarantee that our laws be applied in a manner that is neutral toward religion." *Id*. at 1732. The Supreme Court noted, "the government, if it is to respect the Constitution's guarantee of free exercise, cannot impose regulations that are hostile to the religious beliefs of affected citizens and cannot act in a manner that passes judgment upon or presupposes the illegitimacy of religious beliefs and practices," and "[t]he Free Exercise Clause bars even 'subtle departures from neutrality' on matters of religion." *Id*. at 1731.

13. 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: In *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 717 fn. 28, 724 (2014), the Supreme Court stated that, "[t]o qualify for RFRA's protection, an asserted belief must be sincere," and that "the federal courts have no business addressing" "whether the religious belief asserted in a RFRA case is reasonable." In *Frazee v. Illinois Dept. of Employment Sec.*, 489 U.S. 829, 832-35 (1989), the Supreme Court held a person's

sincerely held religious belief is constitutionally protected even if that person's belief does not represent an accepted belief of the person's religious organization. In *Thomas v. Rev. Bd. of Indiana Emp. Sec. Div.*, 450 U.S. 707, 713-14 (1981) (footnote omitted), the Supreme Court described protection of religious beliefs:

> Only beliefs rooted in religion are protected by the Free Exercise Clause, which, by its terms, gives special protection to the exercise of religion. *Sherbert v. Verner*, *supra*; *Wisconsin v. Yoder*, 406 U.S. 205, 215-216, 92 S. Ct. 1526, 1533, 32 L. Ed. 2d 15 (1972). The determination of what is a "religious" belief or practice is more often than not a difficult and delicate task, as the division in the Indiana Supreme Court attests. However, the resolution of that question is not to turn upon a judicial perception of the particular belief or practice in question; religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection.

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

Response: In *Frazee v. Illinois Dept. of Employment Sec.*, 489 U.S. 829, 832-35 (1989), the Supreme Court held a person's sincerely held religious belief is constitutionally protected even if that person's belief does not represent an accepted belief of the person's religious organization. However, "[o]nly beliefs rooted in religion are protected by the Free Exercise Clause," and "[p]urely secular views do not suffice." *Id*. at 833.

As a sitting Orange County Superior Court, and, if confirmed as a federal district court judge, I have the duty and obligation to not prejudge any case or controversy that may come before me, and to remain open-minded, fair, and impartial in every matter. As a sitting judge, and if confirmed as a federal district court judge, and the issue of whether there are unlimited interpretations of religious and/or church doctrine that can be legally recognized by courts comes before me in a case or controversy, I will prepare for the matter, research the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

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

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

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

Response: As a sitting Orange County Superior Court, and, if confirmed as a federal district court judge, it is not appropriate for me to comment on what the official position of a religious organization is or is not.

14. 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 School v. Morrissey-Berru*, 140 S. Ct. 2049, 2052 (2020), the Supreme Court held that the "First Amendment's Religion Clauses foreclose[d] the adjudication" of an employment discrimination case involving teachers at a religious organization. The Supreme Court noted that "courts are bound to stay out of employment disputes involving those holding certain important positions with churches and other religious institutions," and examined the "ministerial exception" set forth in *Hosanna-Tabor Evangelical Lutheran Church and School v. E.E.O.C.* 565 U.S. 171 (2012). *Id*. at 2060-65. In determining the application of the ministerial exception, the Supreme Court instructed, "courts to take all relevant circumstances into account and to determine whether each particular position implicated the fundamental purpose of the exception." *Id*. at 2067 (footnote omitted).

15. 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, 1871 (2021), the United States Supreme Court held "[t]he refusal of Philadelphia to contract with CSS [(Catholic Social Services)] for the provision of foster care services unless CSS agrees to certify same-sex couples as foster parents violates the Free Exercise Clause of the First Amendment." The Supreme Court stated that the "[g]overnment fails to act neutrally when it proceeds in a manner intolerant of religious beliefs or restricts practices because of their religious nature." *Id*. at 1877. In addition, "[a] law is not generally applicable if it invite[s] the government to consider the particular reasons for a person's conduct by providing a mechanism for individualized exemptions." *Id*. (citation and internal quotation marks omitted). "A law also lacks general applicability if it prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way." *Id*.

16. Explain your understanding of Justice Gorsuch's concurrence in the 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 (Mem) (2021), Justice Gorsuch concurred "in the decision to grant, vacate, and remand" the case. In summary, Justice Gorsuch's concurrence first noted "the County and courts below erred by treating the County's general interest in sanitation regulations as 'compelling' without reference to the specific application of those rules to this community." *Id*. at 2432. Second, the concurrence observed "the County and lower courts erred by failing to give due weight to exemptions other groups enjoy." *Id*. Third, the concurrence noted "the County and lower courts failed to give sufficient weight to rules in other jurisdictions" such as the fact that "[g]overnments in Montana, Wyoming, and other States allow for the disposal of gray water using mulch basins of the sort the Amish have offered to employ." *Id*. at 2433. Fourth, the concurrence indicated that "strict scrutiny demands more than supposition" and "[t]he County must prove with evidence that its rules are narrowly tailored to advance a compelling state interest with respect to the specific persons it seeks to regulate." *Id*.

17. Is 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. I am not aware of any training programs as described. If confirmed as a federal district court judge, and I am asked to evaluate training programs, I would assess the program's content based on the applicable law, including Supreme Court and Ninth Circuit precedent.

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

Response: Please see my answer above to question 17(a).

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

Response: Please see my answer above to question 17(a).

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

Response: Please see my answer above to question 17(a).

18. 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: In the district where I am nominated, the Central District of California, I am not aware of the trainings or training programs offered to and provided by courts. If confirmed as federal district court judge, I will do what I have done as an attorney and as a sitting judge, that is, participate in trainings in accordance with the law and ethics.

19. Is the criminal justice system systemically racist?

Response: This question appears appropriate for policy makers. As a sitting Orange County Superior Court, and, if confirmed as a federal district court judge, I have the duty and obligation to not prejudge any case or controversy that may come before me, and to remain open-minded, fair and impartial in every matter. As a sitting judge, and if confirmed as a federal district court judge, and the issues of whether the criminal justice system is systemically racist or discrimination come before me in a case or controversy, I will prepare for the matter, research the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

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

Response: The President has the authority to make certain political appointments, subject to the advice and consent of the Senate. *United States v. Arthrex, Inc.*, 141 S. Ct. 1970, 1979 (2021); U.S. Const. art. II, § 2, cl. 2. The Supreme Court has held that under the Due Process of the Fifth Amendment, the federal government is subject to antidiscrimination provisions, similar to the States being subject to antidiscrimination provisions under the Fourteenth Amendment. *Bolling v. Sharpe*, 347 U.S. 497, 498-500 (1954); see also *Hampton v. Wong*, 426 U.S. 88, 100 (1976) (stating "[t]he federal sovereign, like the States, must govern impartially," and "[t]he concept of equal justice under law is served by the Fifth Amendment's guarantee of due process, as well as by the Equal Protection Clause of the Fourteenth Amendment").

As a sitting Orange County Superior Court, and, if confirmed as a federal district court judge, I have the duty and obligation to not prejudge any case or controversy that may come before me, and to remain open-minded, fair, and impartial in every matter. As a sitting judge, and if confirmed as a federal district court judge, and the issue of whether it is appropriate or constitutional for the consideration of skin color or sex when making a political appointment comes before me in a case or controversy, I will prepare for the matter, research the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

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

Response: This question appears appropriate for policy makers. As a sitting Orange County Superior Court, and, if confirmed as a federal district court judge, I have the duty and obligation to not prejudge any case or controversy that may come before me, and to remain open-minded, fair, and impartial in every matter. As a sitting judge, and if confirmed as a federal district court judge, and the issue raised by this question comes before me in a case or controversy, I will prepare for the matter, research the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

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

Response: In *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008), the Supreme Court stated, "There seems to us no doubt, on the basis of both text and history, that the Second Amendment conferred an individual right to keep and bear arms." In *McDonald v. City of Chicago*, 561 U.S. 742, 791 (2010), the Supreme Court held the "Due Process Clause of the Fourteenth Amendment incorporates the Second Amendment right recognized in *Heller*."

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

Response: In *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008), the Supreme Court stated, "Like most rights, the right secured by the Second Amendment is not unlimited."

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

Response: With respect to the right to own a firearm, in *District of Columbia v. Heller*, 554 U.S. 570 (2008) ("*Heller*"), the Supreme Court "declin[ed] to establish a level of scrutiny for evaluating Second Amendment restrictions." *Id.* at 634-35. In several cases, including *United States v. Chovan*, 735 F.3d 1127 (9th Cir. 2013), *Jackson v. City and County of San Francisco*, 746 F.3d 953 (9th Cir. 2014), *Silvester v. Harris*, 843 F.3d 816 (9th Cir. 2016), *Duncan v. Bonta*, 19 F.4th 1087 (9th Cir. 2021) and *Young v. Hawaii*, 992 F.3d 765 (9th Cir. 2021), the Ninth Circuit Court of Appeals has described the two-part test that it applies after *Heller*. The first prong of the two-part test in the Ninth Circuit Court of Appeals states: (1) "First, we ask if the challenged law affects conduct that is protected by the Second Amendment[, and] [w]e base that determination on the historical understanding of the scope of the right." *Young*, 992 F.3d at 783 (citations and internal quotation marks omitted). The second part of the two-part test states: "If the challenged restriction burdens conduct protected by the Second Amendment—either because 'the regulation is neither outside the historical scope of the Second Amendment, nor presumptively lawful'—we move to the second step of the analysis and determine the

appropriate level of scrutiny. *Id*. at 784 (citation omitted.) In applying the second prong of the two-part test, the Ninth Circuit, in reliance on *Heller*, "require[s] one of three levels of scrutiny: If a regulation 'amounts to a destruction of the Second Amendment right,' it is unconstitutional under any level of scrutiny; a law that 'implicates the core of the Second Amendment right and severely burdens that right' receives strict scrutiny; and in other cases in which Second Amendment rights are affected in some lesser way, we apply intermediate scrutiny. *Id*. (citation omitted.)

In *Burdick v. Takushi*, 504 U.S. 428, 434 (1992), the Supreme Court described the standard when looking at burdens on the right to vote:

> A court considering a challenge to a state election law must weigh "the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate" against "the precise interests put forward by the State as justifications for the burden imposed by its rule," taking into consideration "the extent to which those interests make it necessary to burden the plaintiff's rights." *Id*., at 789, 103 S. Ct., at 1570; *Tashjian*, *supra*, 479 U.S., at 213–214, 107 S. Ct., at 547–548.
>
> Under this standard, the rigorousness of our inquiry into the propriety of a state election law depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights. Thus, as we have recognized when those rights are subjected to "severe" restrictions, the regulation must be "narrowly drawn to advance a state interest of compelling importance." *Norman v. Reed*, 502 U.S. 279, 289, 112 S. Ct. 698, 705, 116 L. Ed. 2d 711 (1992). But when a state election law provision imposes only "reasonable, nondiscriminatory restrictions" upon the First and Fourteenth Amendment rights of voters, "the State's important regulatory interests are generally sufficient to justify" the restrictions. *Anderson*, 460 U.S., at 788, 103 S. Ct., at 1569–1570; see also *id*., at 788–789, n. 9, 103 S. Ct., at 1569–1570, n. 9.

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

Response: The Constitution states the President "shall take Care that the Laws be faithfully executed." U.S. Const. art. II, §§ 1, 3; see also *Myers v. U.S.*, 272 U.S. 52, 60 (1926) (stating "[t]he vesting of the executive power in the President was essentially a grant of the power to execute the laws"). The Supreme Court has stated "…the Executive Branch has exclusive authority and absolute discretion to decide whether to prosecute a case…" *United States v. Nixon*, 418 U.S. 683, 693 (1974). In *Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973) the Supreme Court stated "a citizen lacks standing to contest the policies of the prosecuting authority when he himself is neither prosecuted nor threatened with prosecution."

As a sitting Orange County Superior Court, and, if confirmed as a federal district court judge, I have the duty and obligation to not prejudge any case or controversy that may come before me, and to remain open-minded, fair, and impartial in every matter. As a sitting judge, and if confirmed as a federal district court judge, and the issue of whether it is appropriate for the executive under the Constitution to refuse to enforce a law, absent constitutional concerns, comes before me in a case or controversy, I will prepare for the matter, research the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

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

Response: My understanding of the question is that with regard to criminal law and the issue of prosecutorial discretion, the Supreme Court has stated "…the Executive Branch has exclusive authority and absolute discretion to decide whether to prosecute a case…" *United States v. Nixon*, 418 U.S. 683, 693 (1974).

With regard to agencies in the executive branch, in *Heckler v. Chaney*, 470 U.S. 821, 834 (1985), the Supreme Court stated that there is "a general presumption of unreviewability of decisions not to enforce" by agencies. See also *City and County of San Francisco v. U.S. Dept. of Transp.*, 796 F.3d 993, 1004 (9th Cir. 2015) (stating "decisions not to enforce are presumptively unreviewable under 5 U.S.C. § 701(a)(2)").

With regard to administrative substantive rules, in *Perez v. Mortgage Bankers Ass'n*, 575 U.S. 92 (2015), the Supreme Court described the rule promulgation under the Administrative Procedure Act ("APA"):

> The Administrative Procedure Act (APA) establishes the procedures federal administrative agencies use for "rule making," defined as the process of "formulating, amending, or repealing a rule." 5 U.S.C. § 551(5). The APA distinguishes between two types of rules: So-called "legislative 1201 rules" are issued through notice-and-comment rulemaking, see §§ 553(b), (c), and have the "force and effect of law," *Chrysler Corp. v. Brown*, 441 U.S. 281, 302–303, 99 S. Ct. 1705, 60 L. Ed. 2d 208. "Interpretive rules," by contrast, are "issued ... to advise the public of the agency's construction of the statutes and rules which it administers," *Shalala v. Guernsey Memorial Hospital*, 514 U.S. 87, 99, 115 S. Ct. 1232, 131 L. Ed. 2d 106, do not require notice-and-comment rulemaking, and "do not have the force and effect of law," *ibid*.

"Under the APA [Administrative Procedure Act), 'substantive rules' are those that have the 'force and effect of law,' while "interpretive rules" are those that merely " 'advise the public of the agency's construction of the statutes and rules which it administers.' " *Azar v. Allina Health Services*, 139 S. Ct. 1804, 1811 (2019) (citation omitted). "The APA

requires agencies to advise the public through a notice in the Federal Register of the terms or substance of a proposed substantive rule, allowing the public a period to comment." *Erringer v. Thompson*, 371 F.3d 625, 629 (9th Cir. 2004). "This is termed the 'notice and comment' requirement of the APA." *Id.* "Th[e] requirement is designed to give interested persons, through written submissions and oral presentations, an opportunity to participate in the rulemaking process." *Id*. (citation omitted). "Generally, [t]he procedural safeguards of the APA help ensure that government agencies are accountable and their decisions are reasoned." *Id*. (citation and internal quotation marks omitted).

In *Reno-Sparks Indian Colony v. U.S. E.P.A.*, 336 F.3d 899, (9th Cir. 2003), the Ninth Circuit discussed notice requirements under the APA depending on the type of rule:

> …The APA requires an agency proposing a new rule to provide notice of the rule and an opportunity for interested parties to comment. 5 U.S.C. § 553(b-c). An agency need not comply with the above requirements, however, when its proposed rule is interpretive rather than legislative. See 5 U.S.C. § 553(b)(3)(A). Legislative rules, also known as substantive rules, are "those which effect a change in existing law or policy," *Powderly v. Schweiker*, 704 F.2d 1092, 1098 (9th Cir. 1983), or which "impos[e] general, extra-statutory obligations pursuant to authority properly delegated by the legislature." *Alcaraz v. Block*, 746 F.2d 593, 613 (9th Cir. 1984); see also *Hemp Industries Ass'n v. Drug Enforcement Administration*, 333 F.3d 1082, 1087 (9th Cir. 2003). Interpretive rules, on the other hand, "merely clarify or explain existing law or regulations." *Powderly*, 704 F.2d at 1098. Interpretive rules instruct as to what an agency thinks a statute or regulation means. See *Alcaraz*, 746 F.2d at 613. We construe narrowly the APA's interpretive rule exception. See *Sequoia Orange Co. v. Yeutter*, 973 F.2d 752, 757 (9th Cir. 1992).

In *Department of Homeland Security v. Regents of the University of California*, 140 S. Ct. 1891, 1905 (2020), the Supreme Court described judicial review of agency actions:

> The APA establishes a "basic presumption of judicial review [for] one 'suffering legal wrong because of agency action.'" *Abbott Laboratories v. Gardner*, 387 U.S. 136, 140, 87 S. Ct. 1507, 18 L. Ed. 2d 681 (1967) (quoting § 702). That presumption can be rebutted by a showing that the relevant statute "preclude[s]" review, § 701(a)(1), or that the "agency action is committed to agency discretion by law," § 701(a)(2). The latter exception is at issue here.
>
> To "honor the presumption of review, we have read the exception in § 701(a)(2) quite narrowly," *Weyerhaeuser Co. v. United States Fish and Wildlife Serv.*, 586 U.S. ——, ——, 139 S. Ct. 361, 370, 202 L. Ed. 2d 269 (2018), confining it to those rare "administrative decision[s] traditionally left to agency discretion," *Lincoln v. Vigil*, 508 U.S. 182, 191, 113 S. Ct. 2024, 124 L. Ed .2d 101 (1993). This limited category of unreviewable actions includes an agency's decision not to institute enforcement proceedings, *Heckler v. Chaney*, 470 U.S. 821, 831–832,

105 S. Ct. 1649, 84 L. Ed. 2d 714 (1985), and it is on that exception that the Government primarily relies.

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

Response: The federal death penalty is codified in Title 18, United States Code, Section 3591 ("Section 3591") and that statute lists the offenses subject to that provision. Congress has the constitutional authority to enact certain criminal laws such as Section 3591. See *U.S. v. Mujahid*, 799 F.3d 1228 (9th Cir. 2015) (stating "the Necessary and Proper Clause grants Congress broad power to enact legislation, including legislation designed to facilitate appropriate enforcement of federal criminal laws enacted in furtherance of Congress' enumerated powers"). The President has authority to grant pardons and to commute sentences. See U.S. Const. Art. II, § 2, cl. 1 ("The President … shall have Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment"); see also *Schick v. Reed*, 419 U.S. 256 (1974) (concluding the "pardoning power was intended to include the power to commute sentences on conditions which do not in themselves offend the Constitution, but which are not specifically provided for by statute").

As a sitting judge and a judicial nominee, it is not appropriate for me to prejudge any issue that might come before me in a case or controversy. As a sitting judge, and if confirmed as a federal district court judge, and the issue of whether the President has the authority to abolish the death penalty comes before me in a case or controversy, I will prepare for the matter, research the law, read pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

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

Response: In summary, in *Alabama Association of Realtors v. Department of Health & Human Services*, 141 S. Ct. 2485, 2486 (2021), the Supreme Court vacated a stay relating to a nationwide eviction moratorium "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 Director of the Centers for Disease Control and Prevention (CDC). The Supreme Court agreed with "[t]he District Court [that] concluded that its stay is no longer justified under the governing four-factor test" under *Nken v. Holder*, 556 U.S. 418, 434, (2009). *Id*. at 2488. The Supreme Court concluded, "If a federally imposed eviction moratorium is to continue, Congress must specifically authorize it." *Id*. at 2490.

Senator Josh Hawley
Questions for the Record

Fred Slaughter
Nominee, U.S. District Court for the Central District of California

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

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

    Response: I am not aware of or familiar with Justice Marshall's statement or the circumstances or context in which Justice Marshall made the statement. On the limited information I have, I do not agree with the statement as written above. As a sitting judge, I would summarize my judicial philosophy as follows: (1) I prepare for each case or controversy that comes before me; (2) I do not prejudge cases; (3) I hear each case with an open mind, I read the pleadings of the parties, and I listen to the parties; (4) I follow the applicable law and precedent; (5) I apply the applicable law to the individual facts of the case; and (6) I treat the parties respectfully, kindly, and with patience.

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

    Response: The judicial oath requires a judge to faithfully and impartially follow the law. I am not aware of or familiar with Justice Marshall's statement or the circumstances or context in which Justice Marshall made the statement, and therefore cannot provide an opinion on whether the statement violates judicial oaths.

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

Response: (1) *Younger* abstention doctrine. In *Herrera v. City of Palmdale*, 918 F.3d 1037, 1043-44 (9th Cir. 2019), the Ninth Circuit described the abstention doctrine from *Younger v. Harris*, 401 U.S. 37 (1971):

> *Younger* abstention is grounded in a "longstanding public policy against federal court interference with state court proceedings." *Younger*, 401 U.S. at 43, 91 S. Ct. 746. The Supreme Court has "identified two sources for this policy: the constraints of equity jurisdiction and the concern for comity in our federal system." *Gilbertson*, 381 F.3d at 970. Most importantly, *Younger*

abstention permits federal courts to 'preserve respect for state functions such that the national government protects federal rights and interests in a way that will not 'unduly interfere with the legitimate activities of the States.' " *Id*. (quoting *Younger*, 401 U.S. at 44, 91 S. Ct. 746).

A federal court may abstain under *Younger* in three categories of cases: "(1) parallel, pending state criminal proceedings, (2) state civil proceedings that are akin to criminal prosecutions, and (3) state civil proceedings that implicate a State's interest in enforcing the orders and judgments of its courts." *ReadyLink Healthcare, Inc. v. State Comp. Ins. Fund*, 754 F.3d 754, 759 (9th Cir. 2014) (internal quotation marks and citations omitted). First identified in *New Orleans Public Service, Inc. v. Council of New Orleans* ("*NOPSI*"), 491 U.S. 350, 109 S. Ct. 2506, 105 L. Ed. 2d 298 (1989), these three categories are known as the *NOPSI* categories. See *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 72–73, 134 S. Ct. 584, 187 L. Ed. 2d 505 (2013).

To warrant *Younger* abstention, a state civil action must fall into one of the *NOPSI* categories, and must also satisfy a three-part inquiry: the state proceeding must be (1) "ongoing," (2) "implicate important state interests," and (3) provide "an adequate opportunity ... to raise constitutional challenges." *Middlesex Cty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 432, 102 S. Ct. 2515, 73 L. Ed. 2d 116 (1982); see also ReadyLink, 754 F.3d at 759. If the state proceeding falls into one of the *NOPSI* categories and meets the three Middlesex factors, a federal court may abstain under *Younger* so long as "the federal action would have the practical effect of enjoining the state proceedings." *ReadyLink*, 754 F.3d at 759.

(2) *Pullman* abstention doctrine. In *Porter v. Jones*, 319 F.3d 483, 492 (9th Cir. 2003), the Ninth Circuit Court of Appeals described the abstention doctrine from *Railroad Commission of Tex. v. Pullman Co.*, 312 U.S. 496 (1941):

Pullman abstention "is an extraordinary and narrow exception to the duty of a District Court to adjudicate a controversy" that is properly before it. *Canton v. Spokane Sch. Dist. No. 81*, 498 F.2d 840, 845 (9th Cir. 1974). By allowing "federal courts to refrain from deciding sensitive federal constitutional questions when state law issues may moot or narrow the constitutional questions," *San Remo Hotel v. City and County of San Francisco*, 145 F.3d 1095, 1104 (9th Cir.1998), *Pullman* abstention is intended both to avoid "a collision between the federal courts and state ... legislatures," *id*. at 1105 (quoting *Waldron v. McAtee*, 723 F.2d 1348, 1351 (7th Cir. 1983)), and to prevent "the premature determination of constitutional questions," *C–Y*, 703

> F.2d at 377 (quoting *Martin v. Creasy*, 360 U.S. 219, 224, 79 S. Ct. 1034, 3 L. Ed. 2d 1186 (1959)).
>
> In order to "give due respect to a suitor's choice of a federal forum for the hearing and decision of his federal constitutional claims," *Pullman* abstention should rarely be applied. *Zwickler v. Koota*, 389 U.S. 241, 248, 88 S. Ct. 391, 19 L. Ed. 2d 444 (1967). It is appropriate to abstain under *Pullman* only if each of the following three factors is present: "(1) the case touches on a sensitive area of social policy upon which the federal courts ought not enter unless no alternative to its adjudication is open, (2) constitutional adjudication plainly can be avoided if a definite ruling on the state issue would terminate the controversy, and (3) [the proper resolution of] the possible determinative issue of state law is uncertain." *Confederated Salish*, 29 F.3d at 1407; accord *Canton*, 498 F.2d at 845. Thus, the absence of any one of these three factors is sufficient to prevent the application of *Pullman* abstention.

(3) *Burford* abstention doctrine. In *New Orleans Public Service, Inc. v. Council of City of New Orleans*, 491 U.S. 350, 361 (1989) (citation omitted), the Supreme Court described the abstention doctrine from *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943):

> Where timely and adequate state-court review is available, a federal court sitting in equity must decline to interfere with the proceedings or orders of state administrative agencies: (1) when there are "difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result in the case then at bar"; or (2) where the "exercise of federal review of the question in a case and in similar cases would be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern."

(4) *Thibodaux* abstention doctrine. In *City of Tucson v. U.S. West Communications, Inc.*, 284 F.3d 1128, 1134 (9th Cir. 2002) the Ninth Circuit described the abstention doctrine from the diversity case of *Louisiana Power & Light Co. v. City of Thibodaux*, 360 U.S. 25 (1959):

> In *Thibodaux*, the Supreme Court approved a district court's decision to abstain from hearing an eminent domain case where state law apportioning power between the city and the state was uncertain, and any decision by the federal district court would affect state sovereignty.

(5) *Colorado River* abstention doctrine. In *Holder v. Holder*, 305 F.3d 854 (9th Cir. 2002), the Ninth Circuit described the abstention doctrine from the case of *Colorado River Water Conservation Dist. v. U.S.*, 424 U.S. 800 (1976):

> …Under *Colorado River*, considerations of "wise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation," *Colorado River*, 424 U.S. at 817, 96 S. Ct. 1236, may justify a decision by the district court to stay federal proceedings pending the resolution of concurrent state court proceedings involving the same matter, *Intel Corp. v. Advanced Micro Devices, Inc.*, 12 F.3d 908, 912 (9th Cir.1993). "[E]xact parallelism" is not required; "[i]t is enough if the two proceedings are 'substantially similar.' " *Nakash v. Marciano*, 882 F.2d 1411, 1416 (9th Cir.1989) (citations omitted).
>
> But because "[g]enerally, as between state and federal courts [with concurrent jurisdiction], the rule is that the pendency of an action in the state court is no bar to proceedings concerning the same matter in the Federal court having jurisdiction[,]" the *Colorado River* doctrine is a narrow exception to "the virtually unflagging obligation of the federal courts to exercise the jurisdiction given them." *Colorado River*, 424 U.S. at 817, 96 S. Ct. 1236 (internal citation and quotation marks omitted); accord *Intel*, 12 F.3d at 912. In *Moses H. Cone Memorial Hospital v. Mercury Construction Corp.*, 460 U.S. 1, 103 S. Ct. 927, 74 L. Ed. 2d 765 (1983), the Supreme Court clarified that to fit into this narrow doctrine, "exceptional circumstances" must be present. 450 U.S. at 15–16, 101 S. Ct. 836; see also *Colorado River*, 424 U.S. at 818, 96 S. Ct. 1236 ("Given [the federal court's obligation to exercise jurisdiction], and the absence of weightier considerations of constitutional adjudication and state-federal relations, the circumstances permitting the dismissal of a federal suit due to the presence of a concurrent state proceeding for reasons of wise judicial administration are considerably more limited than the circumstances appropriate for abstention. The former circumstances, though exceptional, do nevertheless exist.").

(6) *Rooker-Feldman* Doctrine. In *Bell v. City of Boise*, 709 F.3d 890, 897 (9th Cir. 2013) (footnote omitted), the Ninth Circuit discussed the *Rooker-Feldman* Doctrine from the Supreme Court cases of *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, (1923), and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983):

> The *Rooker–Feldman* doctrine forbids a losing party in state court from filing suit in federal district court complaining of an injury caused by a state court judgment, and seeking federal court review and rejection of that judgment. *Skinner v. Switzer*, —— U.S. ——, 131 S. Ct. 1289, 1297, 179 L. Ed. 2d 233 (2011). To determine whether the *Rooker–Feldman* bar is applicable, a district court first must determine whether the action contains a forbidden de facto appeal of a state court decision. *Noel v. Hall*, 341 F.3d 1148, 1158 (9th

Cir. 2003). A de facto appeal exists when "a federal plaintiff asserts as a legal wrong an allegedly erroneous decision by a state court, and seeks relief from a state court judgment based on that decision." *Id*. at 1164. In contrast, if "a federal plaintiff asserts as a legal wrong an allegedly illegal act or omission by an adverse party, *Rooker–Feldman* does not bar jurisdiction." *Id*. Thus, even if a plaintiff seeks relief from a state court judgment, such a suit is a forbidden de facto appeal only if the plaintiff also alleges a legal error by the state court. *Maldonado v. Harris*, 370 F.3d 945, 950 (9th Cir. 2004); *Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1140 (9th Cir. 2004) ("[A] plaintiff must seek not only to set aside a state court judgment; he or she must also allege a legal error by the state court as the basis for that relief").

If "a federal plaintiff seeks to bring a forbidden de facto appeal, ... that federal plaintiff may not seek to litigate an issue that is 'inextricably intertwined' with the state court judicial decision from which the forbidden de facto appeal is brought." *Noel*, 341 F.3d at 1158. The "inextricably intertwined" language from *Feldman* is not a test to determine whether a claim is a de facto appeal, but is rather a second and distinct step in the *Rooker–Feldman* analysis. See *id*. Should the action not contain a forbidden de facto appeal, the *Rooker–Feldman* inquiry ends. See *Manufactured Home Cmtys. Inc. v. City of San Jose*, 420 F.3d 1022, 1030 (9th Cir. 2005).

3. **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: Not applicable—please see my answer to question 3.

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

   Response: What I have done as a sitting judge in Orange County Superior Court, and what I will do if I am confirmed as a federal district court judge, is to apply the applicable legal precedent when interpreting constitutional provisions. If I am confirmed as a federal district court judge, I will look to binding Supreme Court and Ninth Circuit precedent to decide the role original public meaning or other factors should play in constitutional interpretation.

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

Response: What I have done as a sitting judge in Orange County Superior Court, and what I will do if I am confirmed as a federal district court judge, is to apply the applicable legal precedent when considering the issue of legislative history when interpreting legal texts. If I am confirmed as a federal district court judge, I will look to binding Supreme Court and Ninth Circuit precedent to determine whether to consider legislative history when interpreting legal texts.

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: In *Garcia v. U.S.*, 469 U.S. 70, 76 (1984) (footnote omitted), the United States Supreme Court discussed the use of legislative history in determining legislative intent:

In surveying legislative history we have repeatedly stated that the authoritative source for finding the Legislature's intent lies in the Committee Reports on the bill, which "represen[t] the considered and collective understanding of those Congressmen involved in drafting and studying proposed legislation." *Zuber v. Allen*, 396 U.S. 168, 186, 90 S. Ct. 314, 324, 24 L. Ed. 2d 345 (1969). We have eschewed reliance on the passing comments of one Member, *Weinberger v. Rossi*, 456 U.S. 25, 35, 102 S. Ct. 1510, 1517, 71 L. Ed. 2d 715 (1982), and casual statements from the floor debates. United States v. O'Brien, 391 U.S. 367, 385, 88 S. Ct. 1673, 1683, 20 L. Ed. 2d 672 (1968); *Consumer Product Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 108, 100 S. Ct. 2051, 2056, 64 L. Ed. 2d 766 (1980). In *O'Brien*, *supra*, 391 U.S., at 385, 88 S. Ct., at 1683, we stated that Committee Reports are "more authoritative" than comments from the floor, and we expressed a similar preference in *Zuber*, *supra*, 396 U.S., at 187, 90 S. Ct., at 325.

What I have done as a sitting judge in Orange County Superior Court, and what I will do if I am confirmed as a federal district court judge, is to apply the applicable legal precedent when considering the issues of legislative history and legislative intent. If I am confirmed as a federal district court judge, I will look to binding Supreme Court and Ninth Circuit precedent to analyze the issues of legislative history and legislative intent if those issues come become me in a case or controversy.

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

Response: As a sitting judge, and if confirmed as a federal district court judge, and this issue came before me in a case or controversy, I would prepare for the matter, research the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

6. **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: The Ninth Circuit, in quoting the United States Supreme Court, stated, "To prevail on an Eighth Amendment claim 'there must be a substantial risk of serious harm, an objectively intolerable risk of harm that prevents prison officials from pleading that they were subjectively blameless for purposes of the Eighth Amendment.' " *Lopez v. Brewer*, (2012) 680 F.3d 1068, 1073, quoting *Baze v. Rees*, 553 U.S. 35, 50 (2008).

7. **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: In quoting to precedent, the Supreme Court in *Glossip v. Gross*, 576 U.S. 863, 135 S. Ct. 2726 (2015), stated "A stay of execution may not be granted on grounds such as those asserted here unless the condemned prisoner establishes that the State's lethal injection protocol creates a demonstrated risk of severe pain. [And] [h]e must show that the risk is substantial when compared to the known and available alternatives." *Id*. at 877-88, quoting *Baze v. Rees*, 553 U.S. 35 (2008). As a sitting judge, and if confirmed as a federal district court judge, and this issue came before me in a case or controversy, I would prepare for the matter, research the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

8. **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: I am not aware of any Ninth Circuit cases that stand for that principle. In terms of United States Supreme Court cases, in *District Attorney's Office for Third Judicial Dist. v. Osborne* (2009) 557 U.S. 52, 72, the high court stated, "[Osborne]

asks that we recognize a freestanding right to DNA evidence untethered from the liberty interests he hopes to vindicate with it" and "[w]e reject the invitation and conclude, in the circumstances of this case, that there is no such substantive due process right." The Supreme Court also stated, "Establishing a freestanding right to access DNA evidence for testing would force us to act as policymakers, and our substantive-due-process rulemaking authority would not only have to cover the right of access but a myriad of other issues." *Id*. at 73-74.

9. **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.

10. **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: In *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021), the Supreme Court stated that "…government regulations are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat any comparable secular activity more favorably than religious exercise." See also *Church of Lukumi Babalu Aye, Inc., v. City of Hialeah*, 508 U.S. 520 (1993); *Emp. Div., Dep't of Hum. Res. of Oregon v. Smith*, 494 U.S. 872, 878 (1990).

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

    Response: The United States Supreme Court in *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993), stated:

    > A law burdening religious practice that is not neutral or not of general application must undergo the most rigorous of scrutiny. To satisfy the commands of the First Amendment, a law restrictive of religious practice must advance " 'interests of the highest order' " and must be narrowly tailored in pursuit of those interests. *McDaniel v. Paty*, 435 U.S., at 628, 98 S. Ct., at 1328, quoting *Wisconsin v. Yoder*, 406 U.S. 205, 215, 92 S. Ct. 1526, 1533, 32 L. Ed. 2d 15 (1972). The compelling interest standard that we

> apply once a law fails to meet the *Smith* requirements is not "water[ed] ... down" but "really means what it says." *Employment Div., Dept. of Human Resources of Ore. v. Smith*, 494 U.S., at 888, 110 S. Ct., at 1605. A law that targets religious conduct for distinctive treatment or advances legitimate governmental interests only against conduct with a religious motivation will survive strict scrutiny only in rare cases. It follows from what we have already said that these ordinances cannot withstand this scrutiny.

In *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1877 (2021) the Supreme Court stated that the "[g]overnment fails to act neutrally when it proceeds in a manner intolerant of religious beliefs or restricts practices because of their religious nature." In *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021), the Supreme Court stated that "…government regulations are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat any comparable secular activity more favorably than religious exercise."

12. 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 *Callahan v. Woods*, 658 F.2d 679, 683 (9th Cir. 1981) (footnotes omitted), the Ninth Circuit set forth the criteria for protection under the Free Exercise Clause:

> A religious claim, to merit protection under the free exercise clause of the First Amendment, must satisfy two basic criteria. First, the claimant's proffered belief must be sincerely held; the First Amendment does not extend to "so-called religions which ... are obviously shams and absurdities and whose members are patently devoid of religious sincerity." *Theriault v. Carlson*, 495 F.2d 390, 395 (5th Cir. 1974), cert. denied, 419 U.S. 1003, 95 S. Ct. 323, 42 L. Ed. 2d 279 (1974); see *Stevens v. Berger*, 428 F. Supp. 896, 899 (E.D.N.Y. 1977). Second, as the Supreme Court held in *Wisconsin v. Yoder*, 406 U.S. 205, 215-16, 92 S. Ct. 1526, 1532-33, 32 L. Ed. 2d 15 (1972), the claim must be rooted in religious belief, not in "purely secular" philosophical concerns. Cf. *United States v. Seeger*, 380 U.S. 163, 185, 85 S. Ct. 850, 863, 13 L. Ed. 2d 733 (1965) (test for religious belief within meaning of draft law exemptions is whether beliefs professed are sincerely held and, in claimant's scheme of things, religious).

In *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 717 fn. 28 (2014), the Supreme Court stated "[t]o qualify for RFRA's [(Religious Freedom Restoration Act)] protection, an asserted belief must be 'sincere'; a corporation's pretextual assertion of a religious

belief in order to obtain an exemption for financial reasons would fail." In *Frazee v. Illinois Dept. of Employment Sec.*, 489 U.S. 829, 832-35 (1989), the Supreme Court held a person's sincerely held religious belief is constitutionally protected even if that person's belief does not represent an accepted belief of the person's religious organization. In *Thomas v. Rev. Bd. of Indiana Emp. Sec. Div.*, 450 U.S. 707, 713-14 (1981) (footnote omitted), the Supreme Court described protection of religious beliefs:

> Only beliefs rooted in religion are protected by the Free Exercise Clause, which, by its terms, gives special protection to the exercise of religion. *Sherbert v. Verner*, *supra*; *Wisconsin v. Yoder*, 406 U.S. 205, 215-216, 92 S. Ct. 1526, 1533, 32 L. Ed .2d 15 (1972). The determination of what is a "religious" belief or practice is more often than not a difficult and delicate task, as the division in the Indiana Supreme Court attests. However, the resolution of that question is not to turn upon a judicial perception of the particular belief or practice in question; religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection.

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

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

Response: The United States Supreme Court held in *District of Columbia v. Heller* that "[t]he Second Amendment protects an individual right to possess a firearm unconnected with service in a militia, and to use that arm for traditionally lawful purposes, such as self-defense within the home." 554 U.S. 570 (2008). The Supreme Court stated, "In sum, we hold that the District's ban on handgun possession in the home violates the Second Amendment, as does its prohibition against rendering any lawful firearm in the home operable for the purpose of immediate self-defense." *Id*. at 635.

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.

14. 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 am not familiar with the context in which that statement was made. As stated below in question 14(b), my understanding is that *Lochner v. New York*, 198 U.S. 45 (1905) has been largely overturned and is no longer binding precedent.

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

Response: As a sitting judge on the Orange County Superior Court, and now as a nominee for the federal district court, it is not generally appropriate for me to comment or have an opinion on the correctness of legal precedent such as the case listed above. Instead, as a sitting judge, and if confirmed as a federal district court judge, it is my duty to apply binding precedent to the cases or controversies that come before me. I also have the understanding that *Lochner v. New York*, 198 U.S. 45 (1905) ("*Lochner*") has been largely overturned by subsequent case law, including *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937) and is no longer binding precedent. See, e.g. *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992) (recognizing that *Lochner* was overruled by stating "[f]ourteen years later, *West Coast Hotel Co. v. Parrish*, 300 U.S. 379, 57 S. Ct. 578, 81 L. Ed. 703 (1937), signaled the demise of *Lochner* by overruling *Adkins*" *v. Children's Hospital of District of Columbia*, 261 U.S. 525 (1923)); *Ferguson v. Skrupa*, 372 U.S. 726, 730 (1963) (stating "[t]he doctrine that prevailed in *Lochner* … that due process authorizes courts to hold laws unconstitutional when they believe the legislature has acted unwisely—has long since been discarded"). Thus, I would not apply *Lochner* to cases or controversies that come before me as a sitting judge, or if confirmed, as a federal district court judge.

15. 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: As a sitting judge and a nominee, I am not familiar with any Supreme Court opinions that have not been formally overruled that are no longer good law.

a. If so, what are they?

Response: Not applicable—please see my answer above in question 15.

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

Response: As a sitting judge, and if confirmed as a federal district court judge, I am committed to following all Supreme Court precedent and other binding precedent.

16. 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: I am not familiar with the full context in which Judge Learned Hand made that statement. As a sitting Orange County Superior Court, and if confirmed, as a federal district court judge, I have the duty and obligation to not prejudge any case or controversy that may come before me, and to remain open-minded, fair, and impartial in every matter. If confirmed as a federal district court judge, and the issue referred to in the question comes before me as a case or controversy, I will prepare for the matter, research the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

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

Response: Not applicable—please see my answer above to question 16(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: In *U.S. v. Grinnell Corp.*, 384 U.S. 563, 570-71 (1966), the Supreme Court discussed the offense of monopoly under the Sherman Act:

> The offense of monopoly under s 2 of the Sherman Act has two elements: (1) the possession of monopoly power in the relevant market and (2) the willful acquisition or maintenance of that power as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident. We shall see that this second ingredient presents no major problem here, as what was done in building the empire was done plainly and explicitly for a single purpose. In *United States v. E. I. du Pont De Nemours & Co.*,

> 351 U.S. 377, 391, 76 S. Ct. 994, 1005, 100 L. Ed. 1264, we defined monopoly power as 'the power to control prices or exclude competition.' The existence of such power ordinarily may be inferred from the predominant share of the market. In *American Tobacco Co. v. United States*, 328 U.S. 781, 797, 66 S. Ct. 1125, 1133, 90 L. Ed. 1575, we said that 'over two-thirds of the entire domestic field of cigarettes, and * * * over 80% of the field of comparable cigarettes' constituted 'a substantial monopoly.' In *United States v. Aluminum Co. of America*, 2 Cir., 148 F.2d 416, 429, 90% of the market constituted monopoly power. In the present case, 87% of the accredited central station service business leaves no doubt that the congeries of these defendants have monopoly power—power which, as our discussion of the record indicates, they did not hesitate to wield—if that business is the relevant market. The only remaining question therefore is, what is the relevant market?

As a sitting Orange County Superior Court, and, if confirmed as a federal district court judge, I have the duty and obligation to not prejudge any case or controversy that may come before me, and to remain open-minded, fair, and impartial in every matter. As a sitting judge, and if confirmed as a federal district court judge, and an issue involving monopolies comes before me as a case or controversy, I will prepare for the matter, research the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

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

Response: The definition for "federal common law" in Black's Law Dictionary (11th ed. 2019) is as follows: "The 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." In *Rodriguez v. Federal Deposit Insurance Corporation*, 140 S. Ct. 713, 717 (2020), the United States Supreme Court discussed the issue of federal common law:

> Judicial lawmaking in the form of federal common law plays a necessarily modest role under a Constitution that vests the federal government's "legislative Powers" in Congress and reserves most other regulatory authority to the States. See Art. I, § 1; Amdt. 10. As this Court has put it, there is "no federal general common law." *Erie R. Co. v. Tompkins*, 304 U.S. 64, 78, 58 S. Ct. 817, 82 L. Ed. 1188 (1938). Instead, only limited areas exist in which

federal judges may appropriately craft the rule of decision. *Sosa v. Alvarez-Machain*, 542 U.S. 692, 729, 124 S. Ct. 2739, 159 L. Ed. 2d 718 (2004). These areas have included admiralty disputes and certain controversies between States. See, e.g., *Norfolk Southern R. Co. v. James N. Kirby*, Pty Ltd., 543 U.S. 14, 23, 125 S. Ct. 385, 160 L. Ed. 2d 283 (2004); *Hinderlider v. La Plata River & Cherry Creek Ditch Co.*, 304 U.S. 92, 110, 58 S. Ct. 803, 82 L. Ed. 1202 (1938). In contexts like these, federal common law often plays an important role. But before federal judges may claim a new area for common lawmaking, strict conditions must be satisfied. The Sixth Circuit correctly identified one of the most basic: In the absence of congressional authorization, common lawmaking must be " 'necessary to protect uniquely federal interests.' " *Texas Industries, Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630, 640, 101 S. Ct. 2061, 68 L. Ed. 2d 500 (1981) (quoting *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 426, 84 S. Ct. 923, 11 L. Ed. 2d 804 (1964)).

18. 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: As a sitting state judge, California binding precedent governs my decisions if a case or controversy involving the issue of interpreting provisions of the state's constitution come before me. If confirmed as a federal district court judge, I would be guided by binding precedent, including applicable abstention and deference doctrines, in interpreting a state constitutional provision. See, e.g., *Espinoza v. Montana Dep't of Revenue*, 140 S. Ct. 2246, 2254 (2020). If confirmed as a federal district court judge, and this issue comes before me as a case or controversy, I will prepare for the matter, research the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

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

Response: As a sitting Orange County Superior Court, and, if confirmed, as a federal district court judge, I have the duty and obligation to not prejudge any case or controversy that may come before me, and to remain open-minded, fair, and impartial in every matter. As a sitting judge, and if confirmed as a federal district court judge, and this issue comes before me as a case or controversy, I will prepare for the matter, research the law, read pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

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

Response: As a sitting Orange County Superior Court, and, if confirmed, as a federal district court judge, I have the duty and obligation to not prejudge any case or controversy that may come before me, and to remain open-minded, fair, and impartial in every matter. As a sitting judge, and if confirmed as a federal district court judge, and this issue comes before me as a case or controversy, I will prepare for the matter, research the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

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

Response: As a sitting judge on the Orange County Superior Court, and now as a nominee for the federal district court, it is not generally appropriate for me to comment or have an opinion on the correctness of legal precedent such as the case listed above. Instead, as a sitting judge, and if confirmed as a federal district court judge, it is my duty to apply binding precedent to the cases or controversies that come before me. However, I do agree with prior judicial nominees that the case of *Brown v. Board of Education*, 347 U.S. 483 (1954), was correctly decided as the case establishes foundational legal principles that are unlikely to be litigated in any case that comes before me.

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

Response**:** Federal Rule of Civil Procedure 65 governs injunctive relief. In *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165 (2010), the Supreme Court stated that "[a]n injunction is a drastic and extraordinary remedy, which should not be granted as a matter of course." As a sitting Orange County Superior Court, and, if confirmed, as a federal district court judge, I have the duty and obligation to not prejudge any case or controversy that may come before me, and to remain open-minded, fair, and impartial in every matter. As a sitting judge, and if confirmed as a federal district court judge, and the issue of whether federal courts have the legal authority to issue nationwide injunctions comes before me as a case or controversy, I will prepare for the matter, research the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

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

Response: Please see my answer to question 20 above.

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

Response: Please see my answer to question 20 above.

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

Response: As a sitting Orange County Superior Court, and, if confirmed, as a federal district court judge, I have the duty and obligation to not prejudge any case or controversy that may come before me, and to remain open-minded, fair, and impartial in every matter. As a sitting judge, and if confirmed as a federal district court judge, and this issue comes before me as a case or controversy, I will prepare for the matter, research the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

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

Response: In *Bond v. U.S.*, 564 U.S. 211, 220-22 (2011), the Supreme Court described federalism:

> The federal system rests on what might at first seem a counterintuitive insight, that "freedom is enhanced by the creation of two governments, not one." *Alden v. Maine*, 527 U.S. 706, 758, 119 S. Ct. 2240, 144 L. Ed. 2d 636 (1999). The Framers concluded that allocation of powers between the National Government and the States enhances freedom, first by protecting the integrity of the governments themselves, and second by protecting the people, from whom all governmental powers are derived.
>
> Federalism has more than one dynamic. It is true that the federal structure serves to grant and delimit the prerogatives and responsibilities of the States and the National Government vis-a-vis one another. The allocation of powers in our federal system preserves the integrity, dignity, and residual sovereignty of the States. The federal balance is, in part, an end in itself, to ensure that States function as political entities in their own right.
>
> But that is not its exclusive sphere of operation. Federalism is more than an exercise in setting the boundary between different institutions of government

> for their own integrity. "State sovereignty is not just an end in itself: 'Rather, federalism secures to citizens the liberties that derive from the diffusion of sovereign power.' " *New York v. United States*, 505 U.S. 144, 181, 112 S. Ct. 2408, 120 L. Ed. 2d 120 (1992) (quoting *Coleman v. Thompson*, 501 U.S. 722, 759, 111 S. Ct. 2546, 115 L. Ed. 2d 640 (1991) (Blackmun, J., dissenting)).
>
> Some of these liberties are of a political character. The federal structure allows local policies "more sensitive to the diverse needs of a heterogeneous society," permits "innovation and experimentation," enables greater citizen "involvement in democratic processes," and makes government "more responsive by putting the States in competition for a mobile citizenry." *Gregory v. Ashcroft*, 501 U.S. 452, 458, 111 S. Ct. 2395, 115 L. Ed. 2d 410 (1991). Federalism secures the freedom of the individual. It allows States to respond, through the enactment of positive law, to the initiative of those who seek a voice in shaping the destiny of their own times without having to rely solely upon the political processes that control a remote central power. True, of course, these objects cannot be vindicated by the Judiciary in the absence of a proper case or controversy; but the individual liberty secured by federalism is not simply derivative of the rights of the States.
>
> Federalism also protects the liberty of all persons within a State by ensuring that laws enacted in excess of delegated governmental power cannot direct or control their actions. See *ibid*. By denying any one government complete jurisdiction over all the concerns of public life, federalism protects the liberty of the individual from arbitrary power. When government acts in excess of its lawful powers, that liberty is at stake.
>
> The limitations that federalism entails are not therefore a matter of rights belonging only to the States. States are not the sole intended beneficiaries of federalism. See *New York*, *supra*, at 181, 112 S. Ct. 2408. An individual has a direct interest in objecting to laws that upset the constitutional balance between the National Government and the States when the enforcement of those laws causes injury that is concrete, particular, and redressable. Fidelity to principles of federalism is not for the States alone to vindicate.

In *Gregory v. Ashcroft*, 501 U.S. 452, 457-60 (1991), the Supreme Court also described federalism:

> As every schoolchild learns, our Constitution establishes a system of dual sovereignty between the States and the Federal Government. This Court also has recognized this fundamental principle. In *Tafflin v. Levitt*, 493 U.S. 455,

458, 110 S. Ct. 792, 795, 107 L. Ed. 2d 887 (1990), "[w]e beg[a]n with the axiom that, under our federal system, the States possess sovereignty concurrent with that of the Federal Government, subject only to limitations imposed by the Supremacy Clause." Over 120 years ago, the Court described the constitutional scheme of dual sovereigns:

> " '[T]he people of each State compose a State, having its own government, and endowed with all the functions essential to separate and independent existence,'... '[W]ithout the States in union, there could be no such political body as the United States.' Not only, therefore, can there be no loss of separate and independent autonomy to the States, through their union under the Constitution, but it may be not unreasonably said that the preservation of the States, and the maintenance of their governments, are as much within the design and care of the Constitution as the preservation of the Union and the maintenance of the National government. The Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States." *Texas v. White*, 7 Wall. 700, 725, 19 L. Ed. 227 (1869), quoting *Lane County v. Oregon*, 7 Wall. 71, 76, 19 L. Ed. 101 (1869).

The Constitution created a Federal Government of limited powers. "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. Const., Amdt. 10. The States thus retain substantial sovereign authority under our constitutional system. As James Madison put it:

> "The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite.... The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State." The Federalist No. 45, pp. 292–293 (C. Rossiter ed. 1961).

This federalist structure of joint sovereigns preserves to the people numerous advantages. It 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. See generally McConnell, Federalism: Evaluating the Founders' Design, 54 U. Chi. L. Rev. 1484, 1491–1511 (1987); Merritt, The Guarantee Clause and State Autonomy: Federalism for a Third Century, 88 Colum. L. Rev. 1, 3–10 (1988).

Perhaps the principal benefit of the federalist system is a check on abuses of government power. "The 'constitutionally mandated balance of power' between the States and the Federal Government was adopted by the Framers to ensure the protection of 'our fundamental liberties.' " *Atascadero State Hospital v. Scanlon*, 473 U.S. 234, 242, 105 S. Ct. 3142, 3147, 87 L. Ed. 2d 171 (1985), quoting *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528, 572, 105 S. Ct. 1005, 1028, 83 L. Ed. 2d 1016 (1985) (Powell, J., dissenting). Just as the separation and independence of the coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in any one branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front. Alexander Hamilton explained to the people of New York, perhaps optimistically, that the new federalist system would suppress completely "the attempts of the government to establish a tyranny":

> "[I]n a confederacy the people, without exaggeration, may be said to be entirely the masters of their own fate. Power being almost always the rival of power, the general government will at all times stand ready to check the usurpations of the state governments, and these will have the same disposition towards the general government. The people, by throwing themselves into either scale, will infallibly make it preponderate. If their rights are invaded by either, they can make use of the other as the instrument of redress." The Federalist No. 28, pp. 180–181 (C. Rossiter ed. 1961).

James Madison made much the same point:

> "In a single republic, all the power surrendered by the people is submitted to the administration of a single government; and the usurpations are guarded against by a division of the government into distinct and separate departments. In the compound republic of America, the power surrendered by the people is first divided between two distinct governments, and then the portion allotted to each subdivided among distinct and separate departments. Hence a double security arises to the rights of the people. The different governments

> will control each other, at the same time that each will be controlled by itself." *Id*., No. 51, p. 323.

One fairly can dispute whether our federalist system has been quite as successful in checking government abuse as Hamilton promised, but there is no doubt about the design. If this "double security" is to be effective, there must be a proper balance between the States and the Federal Government. These twin powers will act as mutual restraints only if both are credible. In the tension between federal and state power lies the promise of liberty.

The Federal Government holds a decided advantage in this delicate balance: the Supremacy Clause. U.S. Const., Art. VI, cl. 2. As long as it is acting within the powers granted it under the Constitution, Congress may impose its will on the States. Congress may legislate in areas traditionally regulated by the States. This is an extraordinary power in a federalist system. It is a power that we must assume Congress does not exercise lightly.

23. 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 answer to question 2 above.

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

Response: As a sitting Orange County Superior Court, and, if confirmed, as a federal district court judge, I have the duty and obligation to not prejudge any case or controversy that may come before me, and to remain open-minded, fair, and impartial in every matter. As a sitting judge, and if confirmed as a federal district court judge, and the issue of damages versus injunctive relief comes before me as a case or controversy, I will prepare for the matter, research the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

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

Response: In *Washington v. Glucksberg*, 521 U.S. 702, 719-20 (1997), the United States Supreme Court explained substantive due process:

> The Due Process Clause guarantees more than fair process, and the "liberty" it protects includes more than the absence of physical restraint. *Collins v. Harker Heights*, 503 U.S. 115, 125, 112 S. Ct. 1061, 1068–1069, 117 L. Ed.

2d 261 (1992) (Due Process Clause "protects individual liberty against 'certain government actions regardless of the fairness of the procedures used to implement them' ") (quoting *Daniels v. Williams*, 474 U.S. 327, 331, 106 S. Ct. 662, 665, 88 L. Ed. 2d 662 (1986)). The Clause also provides heightened protection against government interference with certain fundamental rights and liberty interests. *Reno v. Flores*, 507 U.S. 292, 301–302, 113 S. Ct. 1439, 1446–1447, 123 L. Ed. 2d 1 (1993); *Casey*, 505 U.S., at 851, 112 S. Ct., at 2806–2807. In a long line of cases, we have 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, *Loving v. Virginia*, 388 U.S. 1, 87 S. Ct. 1817, 18 L. Ed. 2d 1010 (1967); to have children, *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535, 62 S. Ct. 1110, 86 L. Ed. 1655 (1942); to direct the education and upbringing of one's children, *Meyer v. Nebraska*, 262 U.S. 390, 43 S. Ct. 625, 67 L. Ed. 1042 (1923); *Pierce v. Society of Sisters*, 268 U.S. 510, 45 S. Ct. 571, 69 L. Ed. 1070 (1925); to marital privacy, *Griswold v. Connecticut*, 381 U.S. 479, 85 S. Ct. 1678, 14 L. Ed.2d 510 (1965); to use contraception, *ibid*.; *Eisenstadt v. Baird*, 405 U.S. 438, 92 S. Ct. 1029, 31 L. Ed. 2d 349 (1972); to bodily integrity, *Rochin v. California*, 342 U.S. 165, 72 S. Ct. 205, 96 L. Ed. 183 (1952), and to abortion, *Casey*, *supra*. We have also assumed, and strongly suggested, that the Due Process Clause protects the traditional right to refuse unwanted lifesaving medical treatment. *Cruzan*, 497 U.S., at 278–279, 110 S. Ct., at 2851–2852.

But we "ha[ve] always been reluctant to expand the concept of substantive due process because guideposts for responsible decisionmaking in this unchartered area are scarce and open-ended." *Collins*, 503 U.S., at 125, 112 S. Ct., at 1068. By extending constitutional protection to an asserted right or liberty interest, we, to a great extent, place the matter outside the arena of public debate and legislative action. We must therefore "exercise the utmost care whenever we are asked to break new ground in this field," *ibid*., lest the liberty protected by the Due Process Clause be subtly transformed into the policy preferences of the Members of this Court, *Moore*, 431 U.S., at 502, 97 S. Ct., at 1937 (plurality opinion).

Our established method of substantive-due-process analysis has two primary features: First, we have regularly observed that the Due Process Clause specially protects those fundamental rights and liberties which are, objectively, "deeply rooted in this Nation's history and tradition," *id*., at 503, 97 S. Ct., at 1938 (plurality opinion); *Snyder v. Massachusetts*, 291 U.S. 97, 105, 54 S. Ct. 330, 332, 78 L. Ed. 674 (1934) ("so rooted in the traditions and

conscience of our people as to be ranked as fundamental"), and "implicit in the concept of ordered liberty," such that "neither liberty nor justice would exist if they were sacrificed," *Palko v. Connecticut*, 302 U.S. 319, 325, 326, 58 S. Ct. 149, 152, 82 L. Ed. 288 (1937). Second, we have required in substantive-due-process cases a "careful description" of the asserted fundamental liberty interest. *Flores*, *supra*, at 302, 113 S. Ct., at 1447; *Collins*, *supra*, at 125, 112 S. Ct., at 1068; *Cruzan*, *supra*, at 277–278, 110 S. Ct., at 2850–2851. Our Nation's history, legal traditions, and practices thus provide the crucial "guideposts for responsible decisionmaking," *Collins*, *supra*, at 125, 112 S. Ct., at 1068, that direct and restrain our exposition of the Due Process Clause. As we stated recently in *Flores*, the Fourteenth Amendment "forbids the government to infringe ... 'fundamental' liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest." 507 U.S., at 302, 113 S. Ct., at 1447.

As a sitting judge, and if confirmed as a federal district court judge, and the issue of substantive due process comes before me as a case or controversy, I will prepare for the matter, research the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

26. 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: "The Free Exercise Clause of the First Amendment, which has been applied to the States through the Fourteenth Amendment, [citation], provides that 'Congress shall make no law respecting an establishment of religion, or *prohibiting the free exercise thereof*....' " *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 532 (1993) (emphasis in original). "In addressing the constitutional protection for free exercise of religion, our cases establish the general proposition that 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 a minimum, the protections of the Free Exercise Clause pertain if the law at issue discriminates against some or all

religious beliefs or regulates or prohibits conduct because it is undertaken for religious reasons." *Id*. at 532. "Although a law targeting religious beliefs as such is never permissible, [citation]; [citation] if the object of a law is to infringe upon or restrict practices because of their religious motivation, the law is not neutral, [citation]; and it is invalid unless it is justified by a compelling interest and is narrowly tailored to advance that interest." *Id*. at 533.

As a sitting Orange County Superior Court, and, if confirmed as a federal district court judge, I have the duty and obligation to not prejudge any case or controversy that may come before me, and to remain open-minded, fair, and impartial in every matter. As a sitting judge, and if confirmed as a federal district court judge, and an issue involving the First Amendment's right to the free exercise of religion comes before me as a case or controversy, I will prepare for the matter, research the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

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

Response: Please see my answer to question 26(a) above.

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: "Although a law targeting religious beliefs as such is never permissible, [citation]; [citation] if the object of a law is to infringe upon or restrict practices because of their religious motivation, the law is not neutral, [citation]; and it is invalid unless it is justified by a compelling interest and is narrowly tailored to advance that interest." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 532 (1993). As a sitting judge, and if confirmed as a federal district court judge, and this issue comes before me as a case or controversy, I will prepare for the matter, research the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

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 answer to question 12 above.

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

Response: The Religious Freedom Restoration Act ("RFRA") "…applies to all Federal law, and the implementation of that law, whether statutory or otherwise…" 42 U.S.C. § 2000bb-3(a); see also *Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania*, 140 S. Ct. 2367, 2376 (2020) ("Placing Congress' intent beyond dispute, RFRA specifies that it 'applies to all Federal law, and the implementation of that law, whether statutory or otherwise' "). "Under RFRA, a law that substantially burdens the exercise of religion must serve 'a compelling governmental interest' and be 'the least restrictive means of furthering that compelling governmental interest.' §§ 2000bb–1(a)–(b)." *Little Sisters of the Poor Saints Peter and Paul Home,* 140 S. Ct. at 2376. "RFRA also permits Congress to exclude statutes from RFRA's protections." *Id*. at 2383.

As a sitting judge, and if confirmed as a federal district court judge, and this issue or the issues come before me as a case or controversy, I will prepare for the matter, research the law, read pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

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.

27. 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 not aware of or familiar with this statement. I am also unaware of the context in which it was made. As a sitting judge, and if confirmed, for each case or controversy that come before me, I will continue to prepare for the matter, research the law, read pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

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

Response: Yes. In a series of three cases, *People v. Castro*, *People v. Hong*, and *People v. Villanueva*, as cited below in question 28(a), I heard argument regarding the constitutionality of a newly enacted statute (California Penal Code § 1170.95) that limited accomplice liability for murder under the natural-and-probable-consequences doctrine. I concluded that the statute had amended two voter-enacted ballot initiatives and thus violated Article II § 10(c) of California's Constitution. At the time, there was no appellate precedent on the constitutionality issue. The California Court of Appeal later reversed, upholding the statute in unpublished opinions.

a. If yes, please provide appropriate citations.

Response: *People v. Castro*, No. 94NF0824, Dkt. 1 (Orange Cty. Sup. Ct. June 14, 2019), rev'd, No. G057882, 2020 WL 1921148 (Cal. Ct. App. Apr. 21, 2020); *People v. Hong*, No. 00NF2372, Dkt. 1 (Orange Cty. Sup. Ct. June 14, 2019), rev'd, No. G057878, 2020 WL 6231885 (Cal. Ct. App. Oct. 23, 2020); *People v. Villanueva*, No. 94NF0824, Dkt. 1 (Orange Cty. Sup. Ct. Sept. 19, 2019), rev'd, No. G058295, 2021 WL 486869 (Cal. Ct. App. Feb. 23, 2021).

29. 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.

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

Response: As a sitting Orange County Superior Court, and, if confirmed, as a federal district court judge, I have the duty and obligation to not prejudge any case or controversy that may come before me, and to remain open-minded, fair, and impartial in every matter. As a sitting judge, and if confirmed as a federal district court judge, and issues of racial disparities, racial discrimination, and/or racial bias came before me in a case or controversy, I would prepare for the matter, research the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

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

Response: No.

32. How did you handle the situation?

Response: Not applicable—please see my answer to question 31 above.

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

Response: Yes, as a sitting judge, and if confirmed, I am committed to following legal precedent regardless of any personal beliefs.

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

Response: I do not believe any of the Federalist Papers specifically shaped my views of the law. As a sitting judge, and if confirmed as federal district court judge, my methodology for each case or controversy that comes before me is to prepare, research the law, listen to the parties, prepare for the matter, research the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

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

Response: As a sitting Orange County Superior Court, and, if confirmed, as a federal district court judge, I have the duty and obligation to not prejudge any case or controversy that may come before me, and to remain open-minded, fair, and impartial in every matter. As a sitting judge, and if confirmed as a federal district court judge, and this issue comes before me as a case or controversy, I will prepare for the matter, research the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

36. 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: Other than at my hearing before the Senate Judiciary Committee, I do not believe I have ever testified under oath.

37. 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.

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

a. Apple?

Response: No.

b. Amazon?

Response: No.

c. Google?

Response: No.

d. Facebook?

Response: No.

e. Twitter?

Response: No.

39. 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: Not applicable—please see my answer to question 39 above.

40. Have you ever confessed error to a court?

Response: No.

a. If so, please describe the circumstances.

Response: Not applicable—please see my answer to question 40 above.

41. 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**:** All nominees owe and duty of candor and a duty to tell the truth as to all matters, including their judicial philosophy, if any, when testifying oath before the Senate Judicial Committee.

Questions for the Record for Fred Wallace Slaughter
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
Fred Wallace Slaughter, Nominee to the District Court for the Central District of California

1. How would you describe your judicial philosophy?

Response: As a sitting judge, I would summarize my judicial philosophy as follows: (1) I prepare for each case or controversy that comes before me; (2) I do not prejudge cases; (3) I hear each case with an open mind, I read the pleadings of the parties, and I listen to the parties; (4) I follow the applicable law and precedent; (5) I apply the applicable law to the individual facts of the case; and (6) I treat the parties respectfully, kindly, and with patience.

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

Response: If confirmed, and an issue involving statutory interpretation comes before me in a case or controversy, I would look to all binding precedent, including Supreme Court and Ninth Circuit precedent, in conducting statutory interpretation analysis. In *Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Found., Inc.*, 484 U.S. 49, 56 (1987) (citation omitted), the Supreme Court explained, "'[i]t is well settled that 'the starting point for interpreting a statute is the language of the statute itself.'" "If 'the statute is clear and unambiguous, that is the end of the matter'" and "[t]here is no need to look beyond the plain meaning in order to derive the 'purpose' of the statute." *Tang v. Reno*, 77 F.3d 1194, 1196-97 (9th Cir. 1996) (citations omitted); see also *Hardt v. Reliance Standard Life Ins. Co.*, 560 U.S. 242, 251 (2010) [stating "[w]e must enforce plain and unambiguous statutory language according to its terms"]. "The preeminent canon of statutory interpretation requires us to 'presume that [the] legislature says in a statute what it means and means in a statute what it says there.'" *BedRoc Ltd., LLC v. U.S.*, 541 U.S. 176, 183 (2004) (citation omitted). If the language is not clear, Congress's intent must still be ascertained. *Tang*, 77 F.3d at 1197. "'If the statute's terms are ambiguous, [however,] we may use canons of construction, legislative history, and the statute's overall purpose to illuminate Congress's intent.'" *Woods v. Carey*, 722 F.3d 1177 (9th Cir. 2013) (citation omitted). If legislative history is utilized, the Supreme Court explained that "[l]egislative history, for those who take it into account, is meant to clear up ambiguity, not create it. When presented, on the one hand, with clear statutory language and, on the other, with dueling committee reports, we must choose the language." *Milner v. Dep't of the Navy*, 562 U.S. 562, 574 (2011) (internal quotation marks and citations omitted).

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

Response: If confirmed as a federal district judge, I would be bound by Supreme Court and Ninth Circuit precedent if a case or controversy came before me involving

interpretation of a constitutional provision. The Supreme Court has provided guidance on certain constitutional provisions and I would be bound by and follow that guidance. For example, in *District of Columbia v. Heller*, 554 U.S. 570, 576-77 (2008), described the methodology of originalism in constitutional interpretation:

> In interpreting this text, we are guided by the principle that "[t]he Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning." *United States v. Sprague*, 282 U.S. 716, 731, 51 S. Ct. 220, 75 L. Ed. 640 (1931); see also *Gibbons v. Ogden*, 9 Wheat. 1, 188, 6 L. Ed. 23 (1824). Normal meaning may of course include an idiomatic meaning, but it excludes secret or technical meanings that would not have been known to ordinary citizens in the founding generation.

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

Response: If confirmed as a federal district judge, in interpreting the Constitution, I would apply precedent from the Supreme Court and Ninth Circuit. Certain Supreme Court cases have provided direction with regard to interpreting constitutional provisions. For example in *District of Columbia v. Heller*, 554 U.S. 570, 576-77 (2008), the Supreme Court evaluated the relevant text of the Second Amendment by looking to the original public meaning at the time of the founding. In *Crawford v. Washington*, 541 U.S. 36, 53–54, 59, 61 (2004) the Supreme Court analyzed the relevant text of the Confrontation Clause by evaluating the original intent and understanding of the "Framers."

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: As a sitting judge, and if confirmed, in reading a statute, I first read to the text of the statute. If "'the statute is clear and unambiguous, that is the end of the matter'" and "[t]here is no need to look beyond the plain meaning in order to derive the 'purpose' of the statute." *Tang v. Reno*, 77 F.3d 1194, 1196-97 (9th Cir. 1996) (citations omitted). "'If the statute's terms are ambiguous,'" I would "use canons of construction, legislative history, and the statute's overall purpose to illuminate Congress's intent'" (*Woods v. Carey*, 722 F.3d 1177 (9th Cir. 2013) (citation omitted), and consult legal precedent, including Supreme Court and Ninth Circuit precedent. If there is no binding precedent from the Supreme Court or the Ninth Circuit, I would consult relevant out of circuit persuasive legal precedent.

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 *Bostock v. Clayton County, Georgia*, 140 S. Ct 1731, 1738 (2020), the Supreme Court stated:

> This Court normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment. After all, only the words on the page constitute the law adopted by Congress and approved by the President. If judges could add to, remodel, update, or detract from old statutory terms inspired only by extratextual sources and our own imaginations, we would risk amending statutes outside the legislative process reserved for the people's representatives. And we would deny the people the right to continue relying on the original meaning of the law they have counted on to settle their rights and obligations. [Citation.]

If confirmed as a federal district court judge, and this issue comes before me in a case or controversy, I will prepare for the matter, research the law, read pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

6. What are the constitutional requirements for standing?

Response: "Standing to sue is a doctrine rooted in the traditional understanding of a case or controversy. The doctrine developed in our case law to ensure that federal courts do not exceed their authority as it has been traditionally understood." *Spokeo, Inc. v. Robbins*, 578 U.S. 330, 338 (2016). In *Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167, 180-81 (2000), the Supreme Court described the constitutional requirements for standing:

> In *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–561, 112 S. Ct. 2130, 119 L. Ed. 2d 351(1992), we held that, to satisfy Article III's standing requirements, a plaintiff must show (1) it has suffered an "injury in fact" that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

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

Response: The Articles of the Constitution and the Amendments to the Constitution include Congress's authority. For example, Article I, Section 8, of the Constitution includes Congress's power to "make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof." In *M'Culloch v. Maryland*, 17 U.S. 316, 421 (1819) ("*M'Culloch*"), the Supreme Court stated: "Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional." After *M'Culloch* (and within *M'Culloch*), the Supreme Court identified several implied powers held by Congress. "[I]n determining whether the

Necessary and Proper Clause grants Congress the legislative authority to enact a particular federal statute, we look to see whether the statute constitutes a means that is rationally related to the implementation of a constitutionally enumerated power." *United States v. Comstock*, 560 U.S. 126, 134 (2010) ("*Comstock*"). Cases discussing the implied powers held by Congress include: the power to create a national bank, *M'Culloch* at 425; the power to enact criminal laws, *United States v. Fox*, 95 U.S. 670, 672 (1877); the power to designate treasury notes as legal tender, *The Legal Tender Cases*, 110 U.S. 421, 450 (1884); the "power to enact legislation for the effective regulation of foreign affairs," *Perez v. Brownell*, 356 U.S. 44, 57 (1958), overruled in part on other grounds by *Afroyim v. Rusk*, 387 U.S. 253 (1967); the power to imprison, *Comstock*, 560 U.S. at 129–30, 146; and the power to require the registration of military sex offenders, *United States v. Kebodeaux*, 570 U.S. 387, 394-95 (2013).

As a sitting judge, and if confirmed as a federal district court judge, and the issue of Congress's implied powers comes before me in a case or controversy, I will prepare for the matter, research the law, read pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

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

Response: If confirmed as a federal district court judge, I would look to Supreme Court and Ninth Circuit precedent to determine whether the law or a substantially similar law had been evaluated. In *U.S. v. Munoz-Flores*, 495 U.S. 385, 391 (1990), the Supreme Court stated:

> …this Court has the duty to review the constitutionality of congressional enactments. As we have said in rejecting a claim identical to the one the Government makes here: Our system of government requires that federal courts on occasion interpret the Constitution in a manner at variance with the construction given the document by another branch. The alleged conflict that such an adjudication may cause cannot justify the courts' avoiding their constitutional responsibility.

In *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 570 (2012) (citation and internal quotation marks omitted), the Supreme Court stated, "the question of the constitutionality of action taken by Congress does not depend on recitals of the power which it undertakes to exercise." Accordingly, a court must evaluate whether a law is within Congress' enumerated powers whether or not the law mentions the enumerated power from which Congress used to pass the law.

As a sitting Orange County Superior Court, and, if confirmed, as a federal district court judge, I have the duty and obligation to not prejudge any case or controversy that may come before me, and to remain open-minded, fair, and impartial in every matter. As a sitting judge, and if confirmed as a federal district court judge, and this issue comes before me as a case or controversy, I will prepare for the matter, research the law, read pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

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

Response: The Supreme Court has determined that the Constitution protects rights that are not expressly enumerated in the Constitution. In *Washington v. Glucksberg*, 521 U.S. 702, 720-721 ("*Glucksberg*") (citations and internal quotation marks omitted), the Supreme Court stated that the Fifth and Fourteenth Amendments of the Constitution protect "those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition," are "implicit in the concept of ordered liberty," and are "such that neither liberty nor justice would exist if they were sacrificed." In *Glucksberg*, the Supreme Court described rights under substantive due process:

> The Due Process Clause guarantees more than fair process, and the "liberty" it protects includes more than the absence of physical restraint. *Collins v. Harker Heights*, 503 U.S. 115, 125, 112 S. Ct. 1061, 1068–1069, 117 L. Ed. 2d 261 (1992) (Due Process Clause "protects individual liberty against 'certain government actions regardless of the fairness of the procedures used to implement them'") (quoting *Daniels v. Williams*, 474 U.S. 327, 331, 106 S. Ct. 662, 665, 88 L. Ed. 2d 662 (1986)). The Clause also provides heightened protection against government interference with certain fundamental rights and liberty interests. *Reno v. Flores*, 507 U.S. 292, 301–302, 113 S. Ct. 1439, 1446–1447, 123 L. Ed. 2d 1 (1993); *Casey*, 505 U.S., at 851, 112 S. Ct., at 2806–2807. In a long line of cases, we have 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, *Loving v. Virginia*, 388 U.S. 1, 87 S. Ct. 1817, 18 L. Ed. 2d 1010 (1967); to have children, *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535, 62 S. Ct. 1110, 86 L. Ed. 1655 (1942); to direct the education and upbringing of one's children, *Meyer v. Nebraska*, 262 U.S. 390, 43 S. Ct. 625, 67 L. Ed. 1042 (1923); *Pierce v. Society of Sisters*, 268 U.S. 510, 45 S. Ct. 571, 69 L. Ed. 1070 (1925); to marital privacy, *Griswold v. Connecticut*, 381 U.S. 479, 85 S. Ct. 1678, 14 L. Ed. 2d 510 (1965); to use contraception, *ibid.*; *Eisenstadt v.*

Baird, 405 U.S. 438, 92 S. Ct. 1029, 31 L. Ed. 2d 349 (1972); to bodily integrity, *Rochin v. California*, 342 U.S. 165, 72 S. Ct. 205, 96 L. Ed. 183 (1952), and to abortion, *Casey*, *supra*. We have also assumed, and strongly suggested, that the Due Process Clause protects the traditional right to refuse unwanted lifesaving medical treatment. *Cruzan*, 497 U.S., at 278–279, 110 S. Ct., at 2851–2852.

Id. at 719-20.

As a sitting judge, and if confirmed as a federal district court judge, and an issue concerning rights protected under substantive due process comes before me in a case or controversy, I will prepare for the matter, research the law, read pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

10. What rights are protected under substantive due process?

Response: Please see the answer to question 9 above.

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

Response: As a sitting judge, and if confirmed as a federal district court judge, it is my duty to apply binding precedent to cases or controversies that come before me. My personal beliefs are not relevant or appropriate to apply to the judicial process. My understanding is that *Lochner v. New York*, 198 U.S. 45 (1905) ("*Lochner*") has been largely overturned by subsequent case law, including *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937) and is no longer binding precedent. See, e.g. *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992) (recognizing that *Lochner* was overruled by stating "[f]ourteen years later, *West Coast Hotel Co. v. Parrish*, 300 U.S. 379, 57 S. Ct. 578, 81 L. Ed. 703 (1937), signaled the demise of *Lochner* by overruling *Adkins" v. Children's Hospital of District of Columbia*, 261 U.S. 525 (1923)); *Ferguson v. Skrupa*, 372 U.S. 726, 730 (1963) (stating "[t]he doctrine that prevailed in *Lochner* … that due process authorizes courts to hold laws unconstitutional when they believe the legislature has acted unwisely—has long since been discarded"). Thus, I would not apply *Lochner* to cases or controversies that come before me as a sitting judge, or if confirmed, as a federal district court judge.

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

Response: In *U.S. v. Lopez*, 514 U.S. 549, 558-559 (1995), the Supreme Court described categories Congress may regulate under the Commerce Clause:

> …we have identified three broad categories of activity that Congress may regulate under its commerce power. *Perez*, *supra*, at 150, 91 S. Ct., at 1359; see also *Hodel*, *supra*, at 276–277, 101 S. Ct., at 2360–2361. First, Congress may regulate the use of the channels of interstate commerce. See, e.g., *Darby*, 312 U.S., at 114, 61 S. Ct., at 457; *Heart of Atlanta Motel*, *supra*, at 256, 85 S. Ct., at 357 (" '[T]he authority of Congress to keep the channels of interstate commerce free from immoral and injurious uses has been frequently sustained, and is no longer open to question.' " (quoting *Caminetti v. United States*, 242 U.S. 470, 491, 37 S. Ct. 192, 197, 61 L. Ed. 442 (1917))). Second, Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities. See, e.g., *Shreveport Rate Cases*, 234 U.S. 342, 34 S. Ct. 833, 58 L. Ed. 1341 (1914); *Southern R. Co. v. United States*, 222 U.S. 20, 32 S. Ct. 2, 56 L. Ed. 72 (1911) (upholding amendments to Safety Appliance Act as applied to vehicles used in intrastate commerce); *Perez*, *supra*, at 150, 91 S. Ct., at 1359 ("[F]or example, the destruction of an aircraft (18 U.S.C. § 32), or ... thefts from interstate shipments (18 U.S.C. § 659)"). Finally, Congress' commerce authority includes the power to regulate those activities having a substantial relation to interstate commerce, *Jones & Laughlin Steel*, 301 U.S., at 37, 57 S. Ct., at 624, i.e., those activities that substantially affect interstate commerce, *Wirtz*, *supra*, at 196, n. 27, 88 S. Ct., at 2024, n. 27.

"*Lopez* emphasized, however, that even under our modern, expansive interpretation of the Commerce Clause, Congress' regulatory authority is not without effective bounds." *U.S. v. Morrison*, 529 U.S. 598, 608 (2000). As a sitting judge, and if confirmed as a federal district court judge, and an issue regarding Congress's power under the Commerce Clause comes before me in a case or controversy, I will prepare for the matter, research the law, read pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

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

Response: In *Ball v. Massanari*, 254 F.3d 817, 823 (9th Cir. 2001), the Ninth Circuit stated, "If the statute employs a suspect class (such as race, religion, or national origin) or burdens the exercise of a constitutional right, then courts must apply strict scrutiny, and ask whether the statute is narrowly tailored to serve a compelling governmental interest." "[T]he Court's decisions have established that classifications based on alienage, like those based on nationality or race, are inherently suspect and subject to close judicial scrutiny." *Graham v. Richardson*, 403 U.S. 365, 371-72 (1971) (footnotes omitted). The Supreme Court looks to several factors in determining whether a group is a suspect class. See, e.g., *Lyng v. Castillo*, 477 U.S. 635, 638 (1986) [stating "[c]lose relatives are not a 'suspect' or 'quasi-suspect' class" because "[a]s a historical matter, they have not been subjected to discrimination; they

do not exhibit obvious, immutable, or distinguishing characteristics that define them as a discrete group; and they are not a minority or politically powerless"]. As a sitting judge, and if confirmed as a federal district court judge, and this issue comes before me in a case or controversy, I will prepare for the matter, research the law, read pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

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

Response: In *Morrison v. Olson*, 487 U.S. 654, 693 (1998) (citation omitted), the Supreme Court explained, "…the system of separated powers and checks and balances established in the Constitution was regarded by the Framers as 'a self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of the other' " and "[w]e have not hesitated to invalidate provisions of law which violate this principle." As a sitting judge, and if confirmed as a federal district court judge, and the issues of checks and balances and/or separation of powers come before me in a case or controversy, I will prepare for the matter, research the law, read pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

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: As a sitting judge, and if confirmed as a federal district court judge, and the issue of whether one branch assumed an authority not granted it by the text of the Constitution comes before me in a case or controversy, I will prepare for the matter, research the law, read pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

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

Response: A judge should be fair and impartial, and objectively apply legal precedent to the applicable facts. To the extent the question is referring to empathy in the context of a judge using bias, emotional reaction, or sympathy in its judicial decisionmaking, that approach is not appropriate.

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

Response: In terms of judicial decisions, invalidating a law that is, in fact, constitutional, and upholding a law that is, in fact, unconstitutional, are both undesirable outcomes.

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

Response: I do not have any information about the statements in this question. As a sitting judge, and if confirmed, my duty is to apply legal precedent to the facts of the matter before me. If confirmed to be a federal district court judge, my duty would remain the same.

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

Response: I understand the concept of "judicial review" in the context of this question to be that as explained in *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803), relating to the authority of courts to hear and decide cases regarding the legality of actions of the executive and legislative branches of government. I understand the concept of "judicial supremacy" in the context of this question to refer to the ability of courts to determine whether Congress exceeded its authority in enacting a law. See, e.g. *Holt v. Hobbs*, 574 U.S. 352, 358 (observing that the Supreme Court had ruled in *City of Boerne v. Flores*, 521 U.S. 507 (1997), that Congress exceeded its authority in making RFRA applicable to the States).

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

Response: Article VI of the Constitution states, in pertinent part:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.
>
> The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to

support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

"No state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it." *Cooper v. Aaron*, 358 U.S. 1, 18 (1958). As a sitting Orange County Superior Court, and, if confirmed, as a federal district court judge, I have the duty and obligation to not prejudge any case or controversy that may come before me, and to remain open-minded, fair, and impartial in every matter. As a sitting judge, and if confirmed as a federal district court judge, and the issue of how elected officials should balance their independent obligation to follow the Constitution with the need to respect duly rendered judicial decisions comes before me as a case or controversy, I will prepare for the matter, research the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

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: As a sitting judge, and if confirmed as a federal district court judge, the content in Federalist 78, includes the reminder that the role of judging is to decide cases or controversies by applying the facts to applicable precedent, and not to enforce laws or make policy.

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: As a sitting judge in Orange County Superior Court, my duty is to apply legal precedent to the facts of the matter before me. As a sitting judge, and if confirmed as a federal district court judge, my duty would remain the same. As a lower court judge, a judge's duty is to follow the law, not to make or question the law. If confirmed as a district court judge for the Central District of California, I will apply applicable legal precedent, including Supreme Court and Ninth Circuit precedent, to the facts in the case or controversy before me.

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: As a sitting judge in Orange County Superior Court, I apply the individual facts of the case to legal precedent, including statutory authority and applicable case law, in determining the appropriate sentence. If confirmed, I would do the same, including applying applicable legal authority and precedent, such as the advisory guidelines and the factors under Title 18, United States Code, Section 3553(a), to the individual facts of the case, to determine the appropriate sentence. See *Nelson v. U.S.* 555 U.S. 350, 351 (2009) (stating "the sentencing court must first calculate the Guidelines range, and then consider what sentence is appropriate for the individual defendant in light of the statutory sentencing factors, 18 U.S.C. § 3553(a), explaining any variance from the former with reference to the latter"). U.S.S.G. § 5H1.10., entitled "Race, Sex, National Origin, Creed, Religion, and Socio-Economic Status (Policy Statement)" states, "These factors 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: I am not familiar or aware of the context or circumstances of the Biden Administration's characterization of the word equity. I do not have a personal definition of the word "equity." "Equity" is defined as "fairness or justice in the way people are treated." ("Equity." 2022. In Merriam-Webster.com. Retrieved January 21, 2022, from https://www.merriam-webster.com/dictionary/equity.)

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

Response: "Equity" is defined as "fairness or justice in the way people are treated." ("Equity." 2022. In Merriam-Webster.com. Retrieved January 21, 2022, from https://www.merriam-webster.com/dictionary/equity.) "Equality" is defined as "the quality or state of being equal" and "the quality or state of having the same rights, social status, etc." ("Equality." 2022. In Merriam-Webster.com. Retrieved January 21, 2022, from https://www.merriam-webster.com/dictionary/equality.)

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

Response: "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const., amend. XIV, § 1. In *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 439 (1985) (citation omitted), the Supreme

Court stated, "The Equal Protection Clause of the Fourteenth Amendment commands that no State shall 'deny to any person within its jurisdiction the equal protection of the laws,' which is essentially a direction that all persons similarly situated should be treated alike." As a sitting Orange County Superior Court, and, if confirmed, as a federal district court judge, I have the duty and obligation to not prejudge any case or controversy that may come before me, and to remain open-minded, fair, and impartial in every matter. As a sitting judge, and if confirmed as a federal district court judge, and this issue comes before me as a case or controversy, I will prepare for the matter, research the law, read pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

27. How do you define "systemic racism?"

Response: I do not have a personal definition of the terminology of "systemic racism," and have not located a definition in case law or reference materials.

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

Response: I do not have a personal definition of the terminology of "critical race theory." The definition of critical race theory in Black's Law Dictionary (11th ed. 2019) is a "reform movement within the legal profession, particularly within academia, whose adherents believe that the legal system has disempowered racial minorities."

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

Response: Because, as described above in question 27, I do not have a definition for "systemic racism," I am unable to make a comparison of the two terms listed in the question above. In addition, as a sitting Orange County Superior Court, and, if confirmed, as a federal district court judge, I have the duty and obligation to not prejudge any case or controversy that may come before me, and to remain open-minded, fair and impartial in every matter. As a sitting judge, and if confirmed as a federal district court judge, and issues of critical race theory and/or systemic racism come before me as a case or controversy, I will prepare for the matter, research the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

Questions from Senator Thom Tillis
for Fred Wallace Slaughter
Nominee to be United States District Judge for
the Central District of California

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

   Response: Yes.

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

   Response: "Judicial Activism" is defined by Black's Law Dictionary (11th ed. 2019) as follows: "A philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions, usually with the suggestion that adherents of this philosophy tend to find constitutional violations and are willing to ignore governing texts and precedents." As a sitting judge, and nominee, I do not consider judicial activism appropriate.

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

   Response: Impartiality is an expectation for a judge. For example, "a judge should participate in cases assigned" but "a judge may not sit in cases in which his 'impartiality might reasonably be questioned.' " *U.S. v. Holland* 519 F.3d 909, 912 (9th Cir. 2008) (citations omitted); see also 28 U.S.C.A. § 455 [setting forth grounds for disqualification including on the topic of impartiality].

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

   Response: No. My duty as a judge is to interpret and apply the law to the individual facts of the case or controversy pending before me.

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

   Response: As a sitting Orange County Superior Court judge, and nominee, when handling cases or controversies that come before me, I do not concentrate on the outcome, but instead apply the applicable law to the individual facts of the matter to render my decision. The outcome of the case is provided by applying the law to the facts, regardless of any subjective opinion about the decision.

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

Response: No. My duty as a judge is to interpret and apply the law to the individual facts of the case or controversy pending before me. My personal views and opinions are not relevant or appropriate to apply to the judicial process.

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

Response: The United Supreme Court in *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008), held that the Second Amendment confers "an individual right to keep and bear arms," and the Supreme Court in *McDonald v. City of Chicago*, 561 U.S. 742, 791 (2010) held that right is incorporated against the States by way of the Fourteenth Amendment. As a sitting judge, and if confirmed as a federal district court judge, and a Second Amendment issue comes before me in a case or controversy, I will prepare for the matter, research the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

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: As a sitting judge and a judicial nominee, it is not appropriate for me to prejudge any issue that might come before me in a case or controversy. As a sitting judge, and if confirmed as a federal district court judge, and this issue comes before me in a case or controversy, I will prepare for the matter, research the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

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

Response: The United States Supreme Court has stated, "The doctrine of qualified immunity protects government officials 'from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (citation omitted). The Supreme Court "mandated a two-step sequence for resolving government officials' qualified immunity claims." *Id*. at 232. "First, a court must decide whether the facts that a plaintiff has alleged (see Fed. Rules Civ. Proc. 12(b)(6), (c)) or shown (see Rules 50, 56) make out a violation of a constitutional right." *Id*. (citation omitted). "Second, if the plaintiff has satisfied this first step, the court must decide whether the right at issue was 'clearly established' at the time of defendant's alleged misconduct." *Ibid*. "Qualified immunity is applicable unless the official's conduct

violated a clearly established constitutional right." *Ibid*. As a sitting judge, and if confirmed as a federal district court judge, and the issue of qualified immunity comes before me in a case or controversy, I will prepare for the matter, research the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

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

Response: As a sitting judge in the Orange County Superior Court, and if confirmed, it would be inappropriate for me to comment on my views or opinions about legal precedent. My duty as a judge is to interpret and apply the law to the individual facts of the case or controversy pending before me. My personal views and opinions are not relevant or appropriate to apply to the judicial process.

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

Response: As a sitting judge in the Orange County Superior Court, and if confirmed, it would be inappropriate for me to comment on my views or opinions about legal precedent. My duty as a judge is to interpret and apply the law to the individual facts of the case or controversy pending before me. My personal views and opinions are not relevant or appropriate to apply to the judicial process.

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: During my legal career as a state court judge, an Assistant United States Attorney, and a Deputy City Attorney for Los Angeles, I have not had the opportunity to handle patent matters. I have researched the area of intellectual property, including reading cases on patent eligibility, and understand the importance of that area of the law. If confirmed as a federal district court judge, I have the duty and obligation to not prejudge any case or controversy that may come before me, and to remain open-minded, fair, and impartial in every matter. If confirmed as a federal district court judge, and the issue of patent eligibility comes before me in a case or controversy, I will prepare for the matter, research the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

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

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

    Response: As a sitting Orange County Superior Court, and, if confirmed, as a federal district court judge, I have the duty and obligation to not prejudge any case or controversy that may come before me, and to remain open-minded, fair, and impartial in every matter. If I were address any specific hypothetical, that would be inconsistent with the previously mentioned duties and obligations, and may suggest to parties that may come before me that I have already prejudged their case or controversy. If confirmed as a federal district court judge, and this issue comes before me in a case or controversy, I will prepare for the matter, research the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

    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: As a sitting Orange County Superior Court, and, if confirmed, as a federal district court judge, I have the duty and obligation to not prejudge any case or controversy that may come before me, and to remain open-minded, fair, and impartial in every matter. If I were address any specific hypothetical, that would be inconsistent with the previously mentioned duties and obligations, and may suggest to parties that may come before me that I have already prejudged their case or controversy. If confirmed as a federal district court judge, and this issue comes before me in a case or controversy, I will prepare for the matter, research the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

    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: As a sitting Orange County Superior Court, and, if confirmed, as a federal district court judge, I have the duty and obligation to not prejudge any case or controversy that may come before me, and to remain open-minded, fair, and impartial in every matter. If I were address any specific hypothetical, that would be inconsistent with the previously mentioned duties and obligations, and may suggest to parties that may come before me that I have already prejudged their case or controversy. If confirmed as a federal district court judge, and this issue comes before me in a case or controversy, I will prepare for the matter, research the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

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: As a sitting Orange County Superior Court, and, if confirmed, as a federal district court judge, I have the duty and obligation to not prejudge any case or controversy that may come before me and to remain open-minded, fair, and impartial in every matter. If I were address any specific hypothetical, that would be inconsistent with the previously mentioned duties and obligations, and may suggest to parties that may come before me that I have already prejudged their case or controversy. If confirmed as a federal district court judge, and this issue comes before me in a case or controversy, I will prepare for the matter, research the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

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: As a sitting Orange County Superior Court, and, if confirmed, as a federal district court judge, I have the duty and obligation to not prejudge any case or controversy that may come before me, and to remain open-minded, fair, and impartial in every matter. If I were address any specific hypothetical, that would be inconsistent with the previously mentioned duties and obligations, and may suggest to parties that may come before me that I have already prejudged their case or controversy. If confirmed as a federal district court judge, and this issue comes

before me in a case or controversy, I will prepare for the matter, research the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

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: As a sitting Orange County Superior Court, and, if confirmed, as a federal district court judge, I have the duty and obligation to not prejudge any case or controversy that may come before me, and to remain open-minded, fair, and impartial in every matter. If I were address any specific hypothetical, that would be inconsistent with the previously mentioned duties and obligations, and may suggest to parties that may come before me that I have already prejudged their case or controversy. If confirmed as a federal district court judge, and this issue comes before me in a case or controversy, I will prepare for the matter, research the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

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

Response: As a sitting Orange County Superior Court, and, if confirmed, as a federal district court judge, I have the duty and obligation to not prejudge any case or controversy that may come before me, and to remain open-minded, fair, and impartial in every matter. If I were address any specific hypothetical, that would be inconsistent with the previously mentioned duties and obligations, and may suggest to parties that may come before me that I have already prejudged their case or controversy. If confirmed as a federal district court judge, and this issue comes before me in a case or controversy, I will prepare for the matter, research the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

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: As a sitting Orange County Superior Court, and, if confirmed, as a federal district court judge, I have the duty and obligation to not prejudge any case or controversy that may come before me, and to remain open-minded, fair, and impartial in every matter. If I were address any specific hypothetical, that would be inconsistent with the previously mentioned duties and obligations, and may suggest to parties that may come before me that I have already prejudged their case or controversy. If confirmed as a federal district court judge, and this issue comes before me in a case or controversy, I will prepare for the matter, research the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

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: As a sitting Orange County Superior Court, and, if confirmed, as a federal district court judge, I have the duty and obligation to not prejudge any case or controversy that may come before me, and to remain open-minded, fair, and impartial in every matter. If I were address any specific hypothetical, that would be inconsistent with the previously mentioned duties and obligations, and may suggest to parties that may come before me that I have already prejudged their case or controversy. If confirmed as a federal district court judge, and this issue comes before me in a case or controversy, I will prepare for the matter, research the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

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: As a sitting Orange County Superior Court, and, if confirmed, as a federal district court judge, I have the duty and obligation to not prejudge any case or controversy that may come before me, and to remain open-minded, fair, and impartial in every matter. If I were address any specific hypothetical, that would be inconsistent with the previously mentioned duties and obligations, and may suggest

to parties that may come before me that I have already prejudged their case or controversy. If confirmed as a federal district court judge, and this issue comes before me in a case or controversy, I will prepare for the matter, research the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

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: During my legal career as a state court judge, an Assistant United States Attorney, and a Deputy City Attorney for Los Angeles, I have not had the opportunity to handle patent matters. I have researched the area of intellectual property, including reading cases on patent eligibility, and understand the importance of that area of the law. As a sitting Orange County Superior Court, and, if confirmed, as a federal district court judge, I have the duty and obligation to not prejudge any case or controversy that may come before me, and to remain open-minded, fair, and impartial in every matter. If I were address any specific hypothetical, that would be inconsistent with the previously mentioned duties and obligations, and may suggest to parties that may come before me that I have already prejudged their case or controversy. If confirmed as a federal district court judge, and this issue comes before me in a case or controversy, I will prepare for the matter, research the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

In *Alice Corp. Pty. Ltd. v. CLS Bank Intern.*, 573 U.S. 208, 216 (2014), the United States Supreme Court described eligibility with regard to intellectual property:

> Section 101 of the Patent Act defines the subject matter eligible for patent protection. It provides:
>
> > "Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title." 35 U.S.C. § 101.
>
> "We have long held that this provision contains an important implicit exception: Laws of nature, natural phenomena, and abstract ideas are not patentable." *Association for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. ——, ——, 133 S. Ct. 2107, 2116, 186 L. Ed. 2d 124 (2013) (internal quotation marks and brackets omitted). We have interpreted § 101 and its predecessors in light of this exception for more than 150 years. *Bilski*, *supra*, at 601–602, 130 S. Ct. 3218; see also *O'Reilly v. Morse*, 15 How. 62, 112–120, 14 L. Ed. 601 (1854); *Le Roy v. Tatham*, 14 How. 156, 174–175, 14 L. Ed. 367 (1853).

With regard to the portion of the question concerning the Supreme Court's ineligibility tests, if confirmed as a federal district court judge, I will apply the applicable law, including Supreme Court and Ninth Circuit precedent, to the individual facts of the case or controversy before me in rendering decisions.

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

    a. What experience do you have with copyright law?

    Response: I do not recall having any cases or matters involving copyright law as an attorney or during my time as a sitting judge.

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

    Response: I do not recall having any cases or matters involving the Digital Millennium Copyright Act as an attorney or during my time as a sitting judge.

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

    Response: I do not recall having any cases or matters addressing intermediary liability for online service providers that hose unlawful content posted by users as an attorney or during my time as a sitting judge.

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

    Response: I do not remember having any cases or matters that focused on First Amendment and free speech issues as an attorney or during my time as a sitting judge. I also do not remember having any cases or matters addressing free speech and intellectual property issues, including copyright, as an attorney or during my time as a sitting judge.

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: As a sitting Orange County Superior Court, and, if confirmed, as a federal district court judge, I have the duty and obligation to not prejudge any case or controversy that may come before me, and to remain open-minded, fair, and impartial in every matter. If confirmed as a federal district court judge, and this issue comes before me in a case or controversy, I will prepare for the matter, research the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

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: As a sitting Orange County Superior Court, and, if confirmed, as a federal district court judge, I have the duty and obligation to not prejudge any case or controversy that may come before me, and to remain open-minded, fair, and impartial in every matter. If confirmed as a federal district court judge, and this issue comes before me in a case or controversy, I will prepare for the matter, research the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

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

Response: As a sitting Orange County Superior Court, and, if confirmed, as a federal district court judge, I have the duty and obligation to not prejudge any case or controversy that may come before me, and to remain open-minded, fair, and impartial in every matter. If confirmed as a federal district court judge, and this issue comes before me in a case or controversy, I will prepare for the matter, research the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

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: As a sitting Orange County Superior Court, and, if confirmed, as a federal district court judge, I have the duty and obligation to not prejudge any case or controversy that may come before me, and to remain open-minded, fair, and impartial in every matter. If confirmed as a federal district court judge, and this issue comes before me in a case or controversy, I will prepare for the matter, research the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

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: As a sitting Orange County Superior Court, and, if confirmed, as a federal district court judge, I have the duty and obligation to not prejudge any case or controversy that may come before me, and to remain open-minded, fair, and impartial in every matter. If confirmed as a federal district court judge, and this issue comes before me in a case or controversy, I will prepare for the matter, research the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

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: As a sitting Orange County Superior Court, and, if confirmed, as a federal district court judge, I have the duty and obligation to not prejudge any case or controversy that may come before me, and to remain open-minded, fair, and impartial in every matter. If confirmed as a federal district court judge, and this issue comes before me in a case or controversy, I will prepare for the matter, research the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

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

Response: As a sitting Orange County Superior Court, and, if confirmed, as a federal district court judge, I have the duty and obligation to not prejudge any case or controversy that may come before me, and to remain open-minded, fair, and impartial in every matter. My duty as a judge is to interpret and apply the law to the individual facts of the case or controversy pending before me.

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: As a sitting Orange County Superior Court, and, if confirmed, as a federal district court judge, I have the duty and obligation to not prejudge any case or controversy that may come before me, and to remain open-minded, fair, and impartial in every matter. My duty as a judge is to interpret and apply the law to the individual facts of the case or controversy pending before me.

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

Response: Not applicable—please see answer to question 18(d).

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: As a sitting judge and federal district court nominee, it would not be appropriate for me to opine on what should be done if a judge continues to flaunt binding case law despite numerous mandamus orders. As a sitting Orange County Superior Court, and, if confirmed, as a federal district court judge, I have the duty and obligation to not prejudge any case or controversy that may come before me, and to remain open-minded, fair, and impartial in every matter. If confirmed as a federal district court judge, and this issue comes before me in a case or controversy, I will prepare for the matter, research the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

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

Response: As a sitting judge and federal district court nominee, it would not be appropriate for me to opine whether some corrective measure beyond intervention by an appellate court is appropriate in such a circumstance. As a sitting Orange County Superior Court, and, if confirmed, as a federal district court judge, I have the duty and obligation to not prejudge any case or controversy that may come before me, and to remain open-minded, fair, and impartial in every matter. If confirmed as a federal district court judge, and this issue comes before me in a case or controversy, I will prepare for the matter, research the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

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: As a sitting Orange County Superior Court, and, if confirmed, as a federal district court judge, I have the duty and obligation to not prejudge any case or controversy that may come before me, and to remain open-minded, fair, and impartial in every matter. My duty as a judge is to interpret and apply the law to the individual facts of the case or controversy pending before me.

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: As a sitting Orange County Superior Court, and, if confirmed, as a federal district court judge, I have the duty and obligation to not prejudge any case or controversy that may come before me, and to remain open-minded, fair, and impartial in every matter. My duty as a judge is to interpret and apply the law to the individual facts of the case or controversy pending before me.

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 Orange County Superior Court, and, if confirmed, as a federal district court judge, I have the duty and obligation to not prejudge any case or controversy that may come before me, and to remain open-minded, fair, and impartial in every matter. If confirmed as a federal district court judge, and this issue comes before me in a case or controversy, I will prepare for the matter, research the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.

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

   Response: As a sitting Orange County Superior Court, and, if confirmed, as a federal district court judge, I have the duty and obligation to not prejudge any case or controversy that may come before me, and to remain open-minded, fair, and impartial in every matter. If confirmed as a federal district court judge, and this issue comes before me in a case or controversy, I will prepare for the matter, research the law, read the pleadings, listen to the parties, make factual findings as is appropriate, and then, consistent with binding precedent, apply the applicable law to the facts.