Senator Josh Hawley
Questions for the Record

Roderick C. Young
Nominee, U.S. District Court for the Eastern District of Virginia

1.

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

The Free Exercise Clause of the First Amendment, which has been applied to the states through the Fourteenth Amendment, provides that "Congress shall make no law . . . prohibiting the free exercise thereof." The Supreme Court has held that the scope of the Free Exercise Clause is broad and that its protections are triggered "if the law at issue discriminates against some or all religious beliefs or regulates or prohibits conduct because it is undertaken for religious reasons." *See Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 532 (1993). If confirmed, I will fully and faithfully apply Supreme Court and Fourth Circuit precedents, including in all cases wherein the First Amendment's protection of free exercise of religion is at issue.

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

The First Amendment mandates that Congress refrain from "prohibiting the free exercise" of religion, and the Fourteenth Amendment incorporates and applies that prohibition to state governments. The Supreme Court held in *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, that "[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." 508 U.S. 520, 532 (1993).

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

The Supreme Court held that a law burdening religious practice that is not neutral or not of general application is subject to strict scrutiny, which means that it must be narrowly tailored to advance a compelling government interest. *See Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531 (1993).

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

It is generally inappropriate for a federal court to question the reasonableness or plausibility of a sincerely held religious belief. *See Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 724 (2014). Therefore, protection for free exercise of religion attaches to religious beliefs that are sincerely held. The Supreme Court has repeatedly affirmed that "religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531 (1993) (quoting *Thomas v. Review Bd. of Indiana Employment Security Div.,* 450 U.S. 707, 714 (1981)). They must simply be "sincerely held." *Frazee v. Illinois Dept. of Employment Security*, 489 U.S. 829, 834 (1989). The Court's "narrow function. . . is to determine" whether the party's asserted religious belief reflects "an honest conviction." *Thomas*, 450 U.S. at 716.

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?

The Religious Freedom Restoration Act (RFRA) requires that the government exempt a party from laws or regulations that "substantially burden a person's exercise of religion" unless "application of the burden . . . is in furtherance of a compelling governmental interest" and "is the least restrictive means of furthering" that interest. 42 U.S.C. § 2000bb-1. RFRA applies "to all Federal law, and the implementation of that law, whether statutory or otherwise," including laws enacted after RFRA's enactment date, "unless such law explicitly excludes such application." 42 U.S.C. § 2000bb-3.

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

Yes.

Smith v. United States Congress, Civil Action No. 3:12CV45, 2015 WL 1011545 (E.D. Va. Mar. 6, 2015).

Walton v. Greensville Correctional Center, Civil Action No. 3:14CV628, 2015 WL 2452451 (E.D. Va. May 21, 2015).

Al-Azim v. Everett, Civil Action No. 3:14CV339, 2017 WL 1097219 (E.D. Va. Mar. 3, 2017), *report and recommendation adopted*, 2017 WL 1100436 (E.D. Va. Mar. 22, 2017).

Prosha v. Robinson, Civil Action No. 3:16CV163, 2018 WL 5779478 (E.D. Va. Nov. 2, 2018).

Mueller v. Bennett, Civil Action No. 3:18CV528, 2020 WL 1430430 (E.D. Va. Mar. 23, 2020).

2.

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

In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court held that the Second Amendment to the Constitution protects an individual's right to possess a firearm unconnected with service in a militia, and to use that firearm for traditionally lawful purposes, including self-defense within the home.

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.

No.

3. 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?

If confirmed and presented with a request for injunctive relief, I would look to Federal Rule of Civil Procedure 65, as well as Supreme Court and Fourth Circuit precedents to resolve the matter. As a general rule, injunctive relief must be narrowly tailored to provide complete relief to the specific parties before the court. The appropriateness of nationwide injunctions is a matter that is presently pending or impending before the court. Therefore, it would be improper for me, as a sitting magistrate judge and as a district judge nominee, to comment or opine on this issue. *See* Cannons 2(A), 3(A)(1), 3(A)(6), and 5(C) of the Code of Conduct for United States Judges.

4. Please state whether you agree or disagree with the following statement and explain why: "Absent binding precedent, judges should interpret statutes based on the meaning of the statutory text, which is that which an ordinary speaker of English

would have understood the words to mean, in their context, at the time they were enacted."

I agree with the statement. It accurately summarizes my understanding of how a federal judge should define words or phrases found in a statute.

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

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

      I have not studied Herbert Spencer's book, *Social Statics*, and am not able to comment on it. I believe Justice Holmes was arguing that the Court should not substitute its own policy preferences for those of elected officials. *See Lochner v. New York*, 198 U.S. 45, 75 (1905) (Holmes, J., dissenting). As a sitting magistrate judge and as a district judge nominee, it would be improper for me to opine or comment on Justice Holmes's dissent in *Lochner*. *See* Cannons 2(A), 3(A)(1), 3(A)(6), and 5(C) of the Code of Conduct for United States Judges.

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

      It is generally improper for a sitting federal magistrate judge or federal district judge nominee to comment on whether particular Supreme Court cases were correctly decided (or overturned). *See* Canons 2(A), 3(A)(6), and 5(C), of the Code of Conduct for United States Judges. Because *Lochner* has been overturned by the Supreme Court, I would not apply it, but would instead faithfully apply all binding precedents of the Supreme Court and the Fourth Circuit.

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

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

      Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., held that when statutory ambiguity leaves "a gap for the agency to fill, there is an express delegation of authority to the agency to elucidate a specific provision of the statute by regulation. Such legislative regulations are given controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute." 467

U.S. 837, 843-44 (1984). The Court also held that Congress's delegation of authority may be implicit rather than explicit. *Id.*

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

I would follow the rules of statutory construction. First, I would look to the text of the statute, its structure, and assign the plain meaning to the words contained therein. If the words of the provision are plain and unambiguous, then my analysis would be complete. If the meaning of a word or phrase in the statute cannot be ascertained by its text, I would then look to Supreme Court and Fourth Circuit precedents respectively. If the meaning were still unclear, I would then use the canons of construction to ascertain the legislature's intent, including looking at the broader statutory context. After using the tools of statutory construction, if the statutory provision's meaning is apparent, the provision is not ambiguous. If, however, two or more competing meanings remain, then the statutory provision is ambiguous.

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

An agency's view on the ambiguity of a statute may be relevant but it is not dispositive. Although a court may consider an agency's reasoning pursuant to *Chevron*, it must not surrender its constitutional duty to say what the law is.