

**Senator Lindsey Graham, Ranking Member**  
**Questions for the Record**  
**Philip S. Hadji**  
**Nominee to be a Judge for the Court of Federal Claims**

- 1. 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 disagree with the idea that the role of judges is to exercise “independent value judgments.” The proper role of a judge is to interpret the law and the facts with neutrality and render decisions based on applying the law to the facts in an impartial manner. If confirmed, I would follow the law, including all Supreme Court and Federal Circuit precedent.

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

Response: I am not familiar with this quote and I do not find that it appropriately describes the way a judge should reach a decision. A judge should interpret the law and the facts with neutrality and render decisions based on applying the law to the facts in an impartial manner. If confirmed, I would follow the law, including all Supreme Court and Federal Circuit precedent.

- 3. Please define the term “living constitution.”**

Response: Black’s Law Dictionary (11th ed. 2019) defines “living constitution” as “A constitution whose interpretation and application can vary over time according to changing circumstances and changing social values.”

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

Response: I’m unfamiliar with the context of Justice Jackson’s quote and I am not sure what she meant by it. If confirmed, I would interpret the Constitution based on its text and structure, applying the precedent of the Supreme Court and the Federal Circuit.

- 5. How do you distinguish between “attacks” on a sitting judge and mere criticism of an opinion he or she has issued?**

Response: Black’s Law Dictionary (11th ed. 2019) defines “attack” as: “The act of assailing either with physical violence or with sharp words.” It defines “ad hominem attack” as: “A personal dig or affront; specif., the criticism of an adversary’s character as opposed to the substance of the adversary’s arguments.” On the other hand, criticize is “to consider the merits and demerits of and judge accordingly.” “Criticize.” Merriam-

Webster.com Dictionary, <https://www.merriam-webster.com/dictionary/criticize>. Put simply, based on these definitions, attacks are often personally-directed and may include violence whereas criticism centers on a more thoughtful analysis of the position at issue.

**6. Please identify a Supreme Court decision from the last 50 years that is a typical example of your judicial philosophy and explain why.**

Response: Because I have never been a judge, I have not had the opportunity to implement a judicial philosophy and therefore cannot identify a Supreme Court decision that comports with my judicial philosophy. A judge should interpret the law and the facts with neutrality and render decisions based on applying the law to the facts in an impartial manner. If confirmed, I would apply this philosophy and work diligently on every case before me.

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

Response: 18 U.S.C. § 1507 imposes a fine, imprisonment for up to one year, or both, against: “[w]hoever, with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty, pickets or parades in or near a building housing a court of the United States, or in or near a building or residence occupied or used by such judge, juror, witness, or court officer, or with such intent uses any sound-truck or similar device or resorts to any other demonstration in or near any such building or residence.”

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

Response: In *Cox v. Louisiana*, 379 U.S. 559, 561-64 (1965), the Supreme Court upheld a state statute modeled on 18 U.S.C. § 1507 against a facial constitutional challenge.

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

Response: The Supreme Court has found “fighting words” to consist of “personally abusive epithets which, when addressed to the ordinary citizen, are, as a matter of common knowledge, inherently likely to provoke violent reaction.” *Cohen v. California*, 403 U.S. 15, 20 (1971).

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

Response: Under the true threats doctrine, a statement does not constitute protected free speech 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 (2003) (citation omitted). A true threat “cannot be determined solely by the reaction of the recipient, but must instead be determined by the interpretation of a reasonable recipient familiar with the context of the communication.” *Elonis v. U.S.*, 575 U.S. 723, 751 (2015) (citations and quotations omitted).

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

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

Response: Canon 3 of the Code of Conduct for United States Judges, which applies to judicial nominees, prohibits judges and judicial nominees from commenting on legal issues that are or could become the subject of litigation. Because the legal issues presented in *Brown v. Board of Education of Topeka* are unlikely to become the subject of litigation, I find it appropriate to state my view that *Brown* was correctly decided.

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

Response: Canon 3 of the Code of Conduct for United States Judges, which applies to judicial nominees, prohibits judges and judicial nominees from commenting on legal issues that are or could become the subject of litigation. Because the legal issues presented in *Loving v. Virginia* are unlikely to become the subject of litigation, I find it appropriate to state my view that *Loving* was correctly decided.

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

Response: Canon 3 of the Code of Conduct for United States Judges, which applies to judicial nominees, prohibits judges and judicial nominees from commenting on legal issues that are or could become the subject of litigation. *Griswold v. Connecticut* is binding precedent of the Supreme Court. If confirmed, I would follow *Griswold* and all other binding precedents of the Supreme Court and Federal Circuit.

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

Response: Canon 3 of the Code of Conduct for United States Judges, which applies to judicial nominees, prohibits judges and judicial nominees from commenting on legal issues that are or could become the subject of litigation. In *Dobbs v. Jackson Women’s Health Organization*, the Supreme Court overturned *Roe v. Wade*. *Dobbs* is binding precedent of the Supreme Court. If confirmed, I would follow *Dobbs* and all other binding precedents of the Supreme Court and Federal Circuit.

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

Response: Canon 3 of the Code of Conduct for United States Judges, which applies to judicial nominees, prohibits judges and judicial nominees from commenting on legal issues that are or could become the subject of litigation. In *Dobbs v. Jackson Women's Health Organization*, the Supreme Court overturned *Planned Parenthood v. Casey*. *Dobbs* is binding precedents of the Supreme Court. If confirmed, I would follow *Dobbs* and all other binding precedents of the Supreme Court and Federal Circuit.

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

Response: Canon 3 of the Code of Conduct for United States Judges, which applies to judicial nominees, prohibits judges and judicial nominees from commenting on legal issues that are or could become the subject of litigation. *Gonzales v. Carhart* is binding precedent of the Supreme Court. If confirmed, I would follow *Gonzales v. Carhart* and all other binding precedents of the Supreme Court and Federal Circuit.

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

Response: Canon 3 of the Code of Conduct for United States Judges, which applies to judicial nominees, prohibits judges and judicial nominees from commenting on legal issues that are or could become the subject of litigation. *District of Columbia v. Heller* is binding precedent of the Supreme Court. If confirmed, I would follow *Heller* and all other binding precedents of the Supreme Court and Federal Circuit.

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

Response: Canon 3 of the Code of Conduct for United States Judges, which applies to judicial nominees, prohibits judges and judicial nominees from commenting on legal issues that are or could become the subject of litigation. *McDonald v. City of Chicago* is binding precedent of the Supreme Court. If confirmed, I would follow *McDonald* and all other binding precedents of the Supreme Court and Federal Circuit.

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

Response: Canon 3 of the Code of Conduct for United States Judges, which applies to judicial nominees, prohibits judges and judicial nominees from commenting on legal issues that are or could become the subject of litigation. *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* is binding precedent of the Supreme Court. If confirmed, I would follow *Hosanna-Tabor* and all other binding precedents of the Supreme Court and Federal Circuit.

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

Response: Canon 3 of the Code of Conduct for United States Judges, which applies to judicial nominees, prohibits judges and judicial nominees from commenting on legal issues that are or could become the subject of litigation. *New York State Rifle & Pistol Association v. Bruen* is binding precedent of the Supreme Court. If confirmed, I would follow *Bruen* and all other binding precedents of the Supreme Court and Federal Circuit.

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

Response: Canon 3 of the Code of Conduct for United States Judges, which applies to judicial nominees, prohibits judges and judicial nominees from commenting on legal issues that are or could become the subject of litigation. *Dobbs v. Jackson Women's Health Organization* is binding precedent of the Supreme Court. If confirmed, I would follow *Dobbs* and all other binding precedents of the Supreme Court and Federal Circuit.

**12. 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.

**13. 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.

**14. Arabella Advisors is a progressive organization founded “to provide strategic guidance for effective philanthropy” that has evolved into a “mission-driven, Certified B Corporation” to “increase their philanthropic impact.”**

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

Response: No.

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

Response: No.

- c. Are you currently in contact with anyone associated with Arabella Advisors? Please include in this answer anyone associated with Arabella’s known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.**

Response: No.

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

Response: No.

**15. 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.

**16. 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.

- 17. Please describe the selection process that led to your nomination to be a Court of Federal Claims Judge, from beginning to end (including the circumstances that led to your nomination and the interviews in which you participated).**

Response: In May 2021, I communicated with the office of Senator Sherrod Brown about my interest in a vacancy on the U.S. Court of Federal Claims. On May 24, 2021, I interviewed with staff members of Senator Brown's office about the position. On October 19, 2021, Senators Brown and Rob Portman sent a letter to President Biden recommending me to fill a vacancy on the U.S. Court of Federal Claims. Senator Bill Cassidy also recommended me for the position. On February 14, 2023, the White House Counsel's Office began communicating with me about my interest in the position and I interviewed with attorneys from that Office on February 17, 2023. Since March 18, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On June 7, 2023, the President announced his intent to nominate me, and on June 8, 2023, my nomination was submitted to the Senate.

- 18. 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.

- 19. 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.

- 20. 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.

- 21. 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.



**22. 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.

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

Response: On February 14, 2023, the White House Counsel's Office began communicating with me about my interest in the position and I interviewed with attorneys from that Office on February 17, 2023. Since March 18, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice.

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

Response: I drafted all answers by myself. I submitted my draft answers to attorneys in the Office of Legal Policy at the Department of Justice for limited feedback. Where I deemed it appropriate, I revised my answers based on this feedback.

**Senate Judiciary Committee  
Nominations Hearing  
July 12, 2023  
Questions for the Record  
Senator Amy Klobuchar**

**For Philip Serge Hadji, nominee to be Judge for the United States Court of Federal Claims:**

**The Court of Federal Claims was formed to hear claims by people against the federal government, which include takings claims, government contracts, and military pay claims. It has been referred to as “the People’s Court.”**

- **In your view, does the Court of Federal Claims have a special duty to *pro se* litigants who represent themselves before the court, but may be unfamiliar with litigation or court procedure?**

Response: Judges have an obligation to treat all parties fairly to ensure that each dispute before the court is resolved based on the facts of the case and the law. This duty applies to both *pro se* litigants and litigants represented by counsel.

- **What steps will you take to ensure that *pro se* litigants receive a fair hearing in your court?**

Response: *Pro se* litigants often present judges with challenges because they are not necessarily as sophisticated about procedure and law. I would ensure that *pro se* litigants are aware of all resources available to them to assist them with their cases. For example, the Court of Federal Claims maintains a public website specifically tailored for *pro se* litigants (*see* <https://www.uscfc.uscourts.gov/pro-se-information>). More generally, if confirmed, I would work tirelessly to ensure that all parties receive the justice that the public deserves and expects from our courts.

**On the side of the Court of Federal Claims courthouse is a quote from Lincoln that says: “It is as much the duty of government to render prompt justice against itself in favor of citizens as it is to administer the same between private individuals.”**

- **Can you discuss the importance of the role of the Court of Federal Claims, and if confirmed how you intend to apply the sentiment expressed by Lincoln?**

Response: As Lincoln's sentiment underscores, the Court of Federal Claims plays a vital role in holding the Federal Government accountable to its citizens. It is the only forum in our federal court system with national jurisdiction for monetary claims against the United States which enables citizens to seek money from the Federal Government on an equal footing with the Federal Government. The Court of Federal Claims epitomizes one of the highest ideals of our country – the Rule of Law. Its jurisdiction is possible because of statutes that waive the sovereign immunity of United States so that any citizen can bring a suit against their government. If confirmed, I would do all that I could to ensure Lincoln's sentiment is carried out as intended and enable this great institution to continue to carry out these important American ideals.

**Senator Mike Lee**  
**Questions for the Record**  
**Philip Hadji, Nominee to the United States Court of Federal Claims**

- 1. What legal experience do you think is necessary for a person to make a good Court of Federal Claims judge, and what have you done to gain this experience?**

Response: It is important to have legal experience in at least one of the practice areas of the Court's jurisdiction. A major part of the docket of the Court of Federal Claims is government contract law matters, which includes contract claims and bid protests. I have handled an extensive range of government contract law matters, including bid protest litigation, litigation of contract claims, contract fraud investigations, debarments, significant contract awards, contract performance issues, energy contracts, IT infrastructure and service contracts, and data rights issues.

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

Response: A judge should interpret the law and the facts with neutrality and render decisions based on applying the law to the facts in an impartial manner. If confirmed, I would apply this philosophy and work diligently on every case before me.

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

Response: I would interpret a federal statute based on its text and structure, applying the precedent of the Supreme Court and the Federal Circuit. If faced with a question that has not been interpreted by the Supreme Court or the Federal Circuit, where the text and structure do not address the question, I would use canons of construction prescribed by the Supreme Court and the Federal Circuit in interpreting similar or analogous provisions.

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

Response: I would interpret a constitutional provision based on the Constitution's text and structure, applying the precedent of the Supreme Court and the Federal Circuit. If faced with a provision that has not been interpreted by the Supreme Court or the Federal Circuit, where the text and structure do not resolve the question, I would use canons of construction prescribed by the Supreme Court and the Federal Circuit in interpreting similar or analogous provisions.

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

Response: If faced with a provision that has not been interpreted by the Supreme Court or the Federal Circuit, where the text and structure do not resolve the question, looking to the original public meaning may be appropriate as instructed by the Supreme Court. For example, the Supreme Court has looked to the original public

meaning in interpreting the text of the Second Amendment. *See District of Columbia v. Heller*, 554 U.S. 570 (2008).

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

Response: I would interpret a federal statute based on its text and structure, applying the precedent of the Supreme Court and the Federal Circuit. If faced with a question that has not been interpreted by the Supreme Court or the Federal Circuit, where the text and structure do not address the question, I would use canons of construction prescribed by the Supreme Court and the Federal Circuit in interpreting similar or analogous provisions.

**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: The “plain meaning” of a constitutional provision refers to the public understanding of the relevant language at the time of enactment. For a statute, the relevant time is the time of enactment. *Bostock v. Clayton County, Georgia*, 140 S. Ct. 1731, 1738 (2020). If confirmed as a judge on the Court of Federal Claims, I would follow the precedent of the Supreme Court and the Federal Circuit to determine the plain meaning of a statute or constitutional provision and the time at which that meaning is assessed.

**7. What are the requirements for standing in the Court of Federal Claims?**

Response: Even though it is an Article I court, the Court of Federal Claims generally follows the standing requirements of Article III courts. 28 U.S.C. § 2519; *Shinnecock Indian Nation v. United States*, 782 F.3d 1345, 1351 n.7 (Fed. Cir. 2015) (“Although the Court of Federal Claims is an Article I tribunal, it generally adheres to traditional justiciability standards applicable to courts established under Article III.”). A plaintiff must show that it has an injury in fact that is fairly traceable to the conduct of the United States and that is likely to be redressed by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560- 61 (1992); *Figueroa v. United States*, 466 F.3d 1023, 1029 (Fed. Cir. 2006).

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

Response: In *McCulloch v. Maryland*, 17 U.S. 316 (1819), the Supreme Court found the Necessary and Proper Clause in Article I, Section 8, of the United States Constitution gives Congress certain implied powers that are not explicitly enumerated in the Constitution.

**9. 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, I would examine the constitutionality of a statute enacted by Congress in which Congress made no reference to a specific enumerated power by carefully following the precedents of the Supreme Court and the Federal Circuit. The Supreme Court has held the determination of the constitutionality of action taken by Congress does not depend on recitals of the power it undertakes to exercise. *Nat'l Fed. Indep. Bus. v. Sebelius*, 567 U.S. 519, 570 (2012).

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

Response: The Supreme Court has held the Constitution protects unenumerated rights only if those rights are “fundamental rights and liberties which are, objectively, deeply rooted in this Nation’s history and tradition” and “implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed.” *Washington v. Glucksberg*, 521 U.S. 702, 720-721 (1997). These rights include the right to marry, *Obergefell v. Hodges*, 576 U.S. 644, 664 (2015); *Loving v. Virginia*, 388 U.S. 1 (1967), the right to have children, *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942); the right to interstate travel, *Saenz v. Roe*, 526 U.S. 489, 498 (1999); and the right to direct the education and upbringing of one’s children, *Meyer v. Nebraska*, 262 U.S. 390 (1923); *Pierce v. Society of Sisters of the Holy Names of Jesus & Mary*, 268 U.S. 510 (1925).

**11. What rights are protected under substantive due process?**

Response: The Supreme Court has held that substantive due process protects the right to privacy in the home, *Griswold v. Connecticut*, 381 U.S. 479 (1965); the right to marry, *Obergefell v. Hodges*, 576 U.S. 644, 664 (2015); *Loving v. Virginia*, 388 U.S. 1 (1967), the right to have children, *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942), the right to interstate travel, *Saenz v. Roe*, 526 U.S. 489, 498 (1999), and the right to direct the education and upbringing of one’s children, *Meyer v. Nebraska*, 262 U.S. 390 (1923); *Pierce v. Society of Sisters of the Holy Names of Jesus & Mary*, 268 U.S. 510 (1925).

**12. 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: In *Dobbs v. Jackson Women’s Health Organization*, 142 S. Ct. 2228 (2022), the Supreme Court held that the Constitution does not protect a right to abortion. In *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937), the Supreme Court held that the Constitution does not protect the economic rights at stake in *Lochner v. New York*. If confirmed, I would follow the precedents of the Supreme Court and the Federal Circuit.

**13. What are the limits on Congress’s power under the Commerce Clause?**

Response: Under the Commerce Clause, Congress' power is limited to (1) the use of the channels of interstate commerce; (2) the instrumentalities of interstate commerce, or persons or things in interstate commerce, even if the threat comes only from intrastate activities; and (3) activities that substantially affect interstate commerce. *United States v. Morrison*, 529 U.S. 598, 609 (2000).

**14. What qualifies a particular group as a “suspect class,” such that laws affecting that group must survive strict scrutiny?**

Response: The suspect classes are race, religion, national origin, and alienage. In determining whether a group qualifies as a suspect class, the Supreme Court looks at whether the group is a “discrete and insular minority.” *United States v. Carolene Products Co.*, 304 U. S. 144, 152-53 n.4 (1938). The Supreme Court’s rationale is whether a particular group shares “traditional indicia of suspectedness,” such as whether it has an “immutable characteristic determined solely by the accident of birth” or is “saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process.” *Johnson v. Robison*, 415 U.S. 361, 375 n.14 (1974) (citations and internal quotation marks omitted).

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

Response: In Federalist 51, Madison described the role that checks and balances and separation of powers play in the Constitution’s structure. He stated: “[B]y so contriving the interior structure of the government as that its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places.” His rationale for such a system was: “Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place. It may be a reflection on human nature, that such devices should be necessary to control the abuses of government.”

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

Response: I would consider the issues presented by the parties, determine the applicable law, including precedent of the Supreme Court and the Federal Circuit, and apply the applicable law to the facts of the case. I would pay particular attention to cases that have specifically addressed this type of issue such as *Nixon v. United States*, 506 U.S. 224, 226 (1993) (holding Senate has sole power to try all impeachments).

**17. What role should empathy play in a judge’s consideration of a case?**

Response: A judge should interpret the law and the facts with neutrality and render decisions based on applying the law to the facts in an impartial manner. If confirmed, I would apply this philosophy and work diligently on every case before me.

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

Response: Black's Law Dictionary (11th ed. 2019) defines "judicial review" as a "court's power to review the actions of other branches or levels of government; especially the courts' power to invalidate legislative and executive actions as being unconstitutional." Black's Law Dictionary (11th ed. 2019) defines "judicial supremacy" as the doctrine providing that "interpretations of the Constitution by the federal judiciary in the exercise of judicial review, especially U.S. Supreme Court interpretations, are binding on the coordinate branches of the federal government and the states."

**19. 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: All elected officials take an oath to uphold the Constitution, *see* U.S. Const., art. VI, § 3, and are required to adhere to duly rendered judicial decisions. *Cooper v. Aaron*, 358 U.S. 1, 18 (1958). Elected officials may also pass legislation or seek to amend the Constitution.

**20. What role does precedent play in the opinions of a Court of Federal Claims judge?**

Response: Judges on the Court of Federal Claims are required to follow precedent of the Supreme Court and the Federal Circuit. If confirmed, I would follow the precedent of the Supreme Court and the Federal Circuit.

**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: The Constitution limits the role of courts to cases and controversies. As Hamilton described in Federalist 78, the role of the legislative and executive branches is to make and enforce the law. A judge should interpret the law and the facts with neutrality and render decisions based on applying the law to the facts in an impartial manner. If confirmed, I would follow the precedent of the Supreme Court and the Federal Circuit.



22. **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: Judges on the Court of Federal Claims are bound by the precedent of the Supreme Court and the Federal Circuit regardless of whether that precedent has “questionable constitutional underpinnings” or whether the precedent appears to depart from constitutional text, history, or tradition.

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

Response: None.

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 with the quoted definition or its context. Black’s Law Dictionary (11th ed. 2019) defines “equity” as “[f]airness; impartiality; evenhanded dealing” and “[t]he body of principles constituting what is fair and right; natural law.”

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

Response: Black’s Law Dictionary (11th ed. 2019) defines “equity” as “[f]airness; impartiality; evenhanded dealing” and “[t]he body of principles constituting what is fair and right; natural law”; it defines “equality” as “[t]he quality, state, or condition of being equal; esp., likeness in power or political status.”

26. **Does the 14<sup>th</sup> Amendment’s equal protection clause guarantee “equity” as defined by the Biden Administration (listed above in question 24)?**

Response: The Equal Protection Clause of the Fourteenth Amendment guarantees that “[n]o state shall make or enforce any law which shall ... deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV. If

confirmed, I would apply all Supreme Court and Federal Circuit precedents addressing the Equal Protection Clause when applicable. I am not aware of any precedent addressing the term “equity” as defined in this question.

**27. How do you define “systemic racism?”**

Response: Merriam-Webster’s Dictionary defines “systemic racism” as “the oppression of a racial group to the advantage of another as perpetuated by inequity within interconnected systems (such as political, economic, and social systems).” Merriam-Webster’s Dictionary, <https://www.merriam-webster.com/dictionary/systemic%20racism>.

**28. How do you define “critical race theory?”**

Response: Black’s Law Dictionary (11th ed. 2019) defines “critical race theory” as, “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: I have not studied “critical race theory” or “systemic racism.” I distinguish between these terms based on the definitions provided in response to the proceeding two questions.

**30. The Court of Federal Claims has been called “the keeper of the Nation’s conscience” and the “People’s court.” How do you see the court fulfilling such a role? How do you see yourself fulfilling this role if you are confirmed?**

Response: As highlighted by quotations describing it as “the keeper of the Nation’s conscience” and the “People’s court,” the Court of Federal Claims plays a vital role in holding the Federal Government accountable to its citizens. It is the only forum in our federal court system with national jurisdiction for monetary claims against the United States which enables citizens to seek money from the Federal Government on an equal footing with the Federal Government. The Court of Federal Claims epitomizes one of the highest ideals of our country – the Rule of Law. Its jurisdiction is possible because of statutes that waive the sovereign immunity of United States so that any citizen can bring a suit against their government. If confirmed, I would do all that I could to enable this great institution to continue to carry out these important American ideals.

**Questions from Senator Thom Tillis**  
**for Philip S. Hadji, Judicial Nominee to the United States Court of Federal Claims**

- 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: Black's Law Dictionary (11th ed. 2019) defines "judicial activism" as "[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." Judicial activism is inappropriate.

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

Response: Impartiality is an expectation for a judge. Paragraph A of Canon 2 of the Code of Conduct for United States Judges provides that judges "should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Canon 3 provides that judges should perform the duties of the office fairly and impartially.

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

Response: No.

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

Response: Canon 3 provides that judges should perform the duties of the office fairly and impartially and should not be swayed by partisan interests, public clamor, or fear of criticism. Faithfully interpreting the law sometimes results in an undesirable outcome. If confirmed, I would reconcile this concern by trusting that litigants have the opportunity to appeal any decision and that a government based on the rule of law is the best possible model.

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

Response: No.

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

Response: If confirmed, I would follow applicable Supreme Court and Federal Circuit precedent including *District of Columbia v. Heller*, 554 U.S. 570, 629 (2008) (finding the Second Amendment protects an individual right to keep and bear arms for lawful purposes, including to keep a usable handgun in the home for self-defense), *McDonald v. Chicago*, 561 US 742 (2010) (applying the Second Amendment right to keep and bear arms for the purpose of self-defense applicable to the states), and *New York State Rifle & Pistol Assoc. v. Bruen*, 142 S. Ct. 2111, 2122 (2022) (finding the Second Amendment’s individual right to keep and bear arms for lawful purposes includes the right to carry a gun for self-defense outside the home).

**8. How would you evaluate a lawsuit challenging a Sheriff’s policy of not processing handgun purchase permits?**

Response: I would closely examine the issues presented by the parties, review applicable law, including precedent of the Supreme Court in *New York Rifle & Pistol Ass’n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022) and apply the law to the facts of the case.

**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: As a lawyer for the Navy Office of the General Counsel for almost 12 years with a practice focused on government contract law matters, I have not been presented the opportunity to consider a qualified immunity matter and do not expect that I will be presented with such an issue if confirmed as a judge on the Court of Federal Claims. If presented with such an issue, I would closely examine the issues presented by the parties, review applicable law, including precedent of the Supreme Court, and apply the law to the facts of the case. The Supreme Court has held that qualified immunity protects government officials “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) (internal citations omitted).

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

Response: Whether qualified immunity jurisprudence provides sufficient protection for law enforcement officers is a policy question best addressed to policy makers. The Supreme Court has held that qualified immunity protects government officials “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) (internal citations omitted). If confirmed, I would follow all Supreme Court and Federal Circuit precedent.

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

Response: The proper scope of qualified immunity is a policy question best addressed to policy makers. The Supreme Court has held that qualified immunity protects government officials “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) (internal citations omitted). If confirmed, I would follow all Supreme Court and Federal Circuit precedent.

**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: Canon 3 of the Code of Conduct for United States Judges, which applies to judicial nominees, prohibits judges and judicial nominees from commenting on legal issues that are or could become the subject of litigation. The issue of patent eligibility is currently pending before the Supreme Court on certiorari, *Interactive Wearables, LLC, v. Polar Electro Oy*, S. Ct. No. 21-1281; *Tropp v. Travel Sentry, Inc.*, S. Ct. No. 22-22. If faced with a question of patent eligibility, I would apply the law and the precedent of the Supreme Court and the Federal Circuit.

**13. Do you believe the current patent eligibility jurisprudence provides the clarity and consistency needed to incentivize innovation? How would you apply the Supreme Court’s ineligibility tests—laws of nature, natural phenomena, and abstract ideas—to cases before you?**

Response: Please see my response to the previous question.

**14. 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: Through my work as an attorney with the Navy Office of the General Counsel, I have worked on a number of government contract matters involving proposed contracts or executed contracts containing provisions that address copyrights and other intellectual property matters. My role in these matters has been to protect the intellectual property interests of the Navy in a manner that conforms to applicable law and Navy policy.

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

Response: While I have worked on intellectual property issues in the context of government contracts involving the Navy, I cannot think of an example that involved the Digital Millennium Copyright Act.

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

Response: My experience with intellectual property law has been in the context of government contracts involving the Navy. My role in these matters has been to protect the intellectual property interests of the Navy in a manner that conforms to applicable law and Navy policy. I cannot think of a time where I specifically worked on a matter involving intermediary liability for online service providers that host unlawful content posted by users.

**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: My experience with intellectual property law has been in the context of government contracts involving the Navy. My role in these matters has been to protect the intellectual property interests of the Navy in a manner that conforms to applicable law and Navy policy. I cannot think of a time where I worked on a First Amendment or free speech issue.

**15. 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 reported that 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: If confirmed, I would start any inquiry into statutory interpretation by looking to Supreme Court and Federal Circuit precedent. If faced with an issue where there is no precedent on point, I would first look at the text of the statute itself. My analysis would end there if the statutory text is clear. However, if the text was ambiguous, I would carefully consider other sources authorized by the Supreme Court and Federal Circuit including canons of construction, persuasive precedent

from other courts, and finally legislative history. The Supreme Court has found that it is only appropriate to use legislative history when necessary to interpret ambiguous statutory text. *BedRoc Limited, LLC v. United States*, 541 U.S. 176, 187 n.8 (2004). The Supreme Court has also explained that full committee reports have greater probative value than statements of individual members of Congress. *Garcia v. United States*, 469 U.S. 70, 76 (1984).

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

Response: The appropriate amount of deference to a federal agency, if any, is an inquiry that depends on, *inter alia*, whether the provision of the statute at issue is ambiguous (known as *Chevron* deference), *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), and whether the provision of the statute involves an issue of “economic and political significance” whereby clear Congressional authorization for deference is required (known as the Major Questions Doctrine). *W. Virginia v. Env’t Prot. Agency*, 142 S. Ct. 2587, 2595 (2022). The Supreme Court is scheduled to consider the issue of *Chevron* deference next term in *Loper Bright Enterprises v. Raimondo*. S. Ct. No. 22-451. If confirmed, I would follow all precedent of the Supreme Court and the Federal Circuit.

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

Response: If confirmed, I would follow the law and the precedent of the Supreme Court and the Federal Circuit on any issue involving the application and interpretation of the copyright laws. Canon 3 of the Code of Conduct for United States Judges, which applies to judicial nominees, prohibits judges and judicial nominees from commenting on legal issues that are or could become the subject of litigation; accordingly, it would be inappropriate for me to comment on how I would address this issue.

**16. 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: Please see my response to the first two parts of the previous question.

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

Response: If confirmed, I would apply applicable law including the precedent of the Supreme Court and the Federal Circuit to the facts of the case. Canon 3 of the Code of Conduct for United States Judges, which applies to judicial nominees, prohibits judges and judicial nominees from commenting on legal issues that are or could become the subject of litigation; accordingly, it would be inappropriate for me to comment on this issue.

- 17. 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 this practice.**

- a. Do you see “judge shopping” and “forum shopping” as a problem in litigation?**

Response: It is my understanding that at the Court of Federal Claims cases are assigned randomly so a litigant cannot shop for judges. If confirmed, I would follow the law and the precedent of the Supreme Court and the Federal Circuit, and the rules of the Court of Federal claims. Canon 3 of the Code of Conduct for United States Judges, which applies to judicial nominees, prohibits judges and judicial nominees from commenting on legal issues that are or could become the subject of litigation; accordingly, it would be inappropriate for me to comment on this issue any further.

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

Response: If confirmed, I would follow the law and the precedent of the Supreme Court and the Federal Circuit, and the rules of the Court of Federal claims. Canon 3 of the Code of Conduct for United States Judges, which applies to judicial nominees, prohibits judges and judicial nominees from commenting on legal issues that are or could become the subject of litigation; accordingly, it would be inappropriate for me to comment on this issue.

- 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: If confirmed, I would follow the law and the precedent of the Supreme Court and the Federal Circuit, and the rules of the Court of Federal claims. Canon 3



of the Code of Conduct for United States Judges, which applies to judicial nominees, prohibits judges and judicial nominees from commenting on legal issues that are or could become the subject of litigation; accordingly, it would be inappropriate for me to comment on this issue.

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

Response: If confirmed, I would follow the law and the precedent of the Supreme Court and the Federal Circuit, and the rules of the Court of Federal claims. Canon 3 of the Code of Conduct for United States Judges, which applies to judicial nominees, prohibits judges and judicial nominees from commenting on legal issues that are or could become the subject of litigation; accordingly, it would be inappropriate for me to comment on this issue.

**18. 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: It is always appropriate for policymakers to consider whether rules can be improved.

**19. 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: It is my understanding that at the Court of Federal Claims cases are assigned randomly so a litigant cannot shop for judges. If confirmed, I would follow the law and the precedent of the Supreme Court and the Federal Circuit, and the rules of the Court of Federal claims. Canon 3 of the Code of Conduct for United States Judges, which applies to judicial nominees, prohibits judges and judicial nominees from commenting on legal issues that are or could become the subject of litigation; accordingly, it would be inappropriate for me to comment on this issue.