Senator Dick Durbin
Chair, Senate Judiciary Committee
Written Questions for Professor Sarah F. Russell
Nominee to be United States District Court Judge for the District of Connecticut
November 8, 2023

1. **After law school, you clerked for two federal judges: first for Judge Michael B. Mukasey on the U.S. District Court for the Southern District of New York, and then for Judge Chester J. Straub on the Second Circuit Court of Appeals.**

   What did you learn about the role of a judge through these clerkships and how will that inform your work on the bench, if you are confirmed?

   Response: Following law school, I clerked for the Honorable Michael B. Mukasey, then Chief Judge of the U.S. District Court for the Southern District of New York. I saw Judge Mukasey approach each case with an open mind, making his decisions only after fully understanding the factual circumstances of the case and carefully studying the relevant binding precedent. The facts and the law led Judge Mukasey to his decisions in each case. Judge Mukasey's love for this country and total commitment to uphold the rule of law, at great personal sacrifice, continue to inspire me. I also had the honor of clerking for the Honorable Chester J. Straub of the U.S. Court of Appeals for the Second Circuit, who is the model of impartiality and collegiality. From Judge Straub, I learned the importance of judges reaching only those issues properly before them and gained an invaluable perspective on how trial court decisions are reviewed. Both Judge Mukasey and Judge Straub approached their work with humility and treated all they encountered with the utmost respect. If I am fortunate to be confirmed, I would seek to emulate them.

2. **In *Martinez-Brooks v. Easter*, you served as class counsel in a class action lawsuit alleging that the Federal Bureau of Prisons was failing to take necessary action to protect incarcerated individuals at FCI Danbury from contracting COVID.**

   a. **Through that work, what observations did you make about the safety of the individuals incarcerated at FCI Danbury?**

      Response: FCI Danbury, a federal prison in Danbury, Connecticut, includes three facilities: a minimum security camp for women, a low security women's facility, and a low security men's facility. COVID hit FCI Danbury in March 2020, and by early April 2020, FCI Danbury was the site of one of the most severe outbreaks of COVID in the federal system.

      As you know, on March 27, 2020, Congress acted quickly to respond to the pandemic by enacting the CARES Act, which authorized the federal Bureau of Prisons (BOP) to lengthen the amount of time prisoners can be placed on home confinement provided that the Attorney General made a finding that emergency conditions were materially affecting the functioning of the BOP.

Soon after, on April 3, 2020, Attorney General Barr made that finding in a memorandum issued to the BOP Director. Noting "significant levels of infection at several of our facilities, including . . . FCI Danbury" and the BOP's "profound obligation to protect the health and safety of all inmates," Attorney General Barr directed the BOP at FCI Danbury and other affected facilities to "move with dispatch in using home confinement, where appropriate, to move vulnerable inmates out of these institutions." Attorney General Barr directed immediate action, instructing the BOP to "immediately review all inmates who have COVID-19 risk factors, as established by the CDC," to "immediately maximize appropriate transfers," and to "begin implementing this directive immediately." He noted that, "[g]iven the speed with which this disease has spread through the general public, it is clear that time is of the essence," and directed the BOP to "implement this Memorandum as quickly as possible." (https://www.bop.gov/coronavirus/docs/bop_memo_home_confinement_april3.pdf) Despite the Attorney General's directive, the warden at FCI Danbury approved few people for home confinement in the weeks that followed.

As COVID spread at FCI Danbury, Quinnipiac's legal clinic joined the Connecticut law firm of Silver Golub & Teitell LLP and a legal clinic at Yale Law School to investigate what might be done to help protect the safety of the men and women at FCI Danbury. This consortium of lawyers, in consultation with medical experts, filed a class action lawsuit seeking judicial involvement in addressing the unsafe conditions at FCI Danbury and in enforcing Attorney General Barr's directive that FCI Danbury expeditiously review medically vulnerable people for home confinement.

b. Did the prison conditions present a danger to your clients?

Response: Yes. In issuing a temporary restraining order on May 12, 2020 in our class action lawsuit, the Honorable Michael P. Shea, now Chief Judge of the U.S. District Court for the District of Connecticut, concluded: "FCI Danbury is experiencing an active COVID-19 outbreak—one of the worst in the federal prison system. One inmate at the prison has already died as a result of contracting the virus, and it is undisputed that members of the vulnerable subclass face a serious risk of meeting the same fate should they contract the virus. In light of the impossibility of instituting effective social distancing in the setting of a prison, like FCI Danbury, where inmates live and sleep in large dormitories lined with bunk beds, the grave risk to Petitioners persists despite the measures prison officials have taken to combat the virus." *Martinez-Brooks v. Easter,* 459 F. Supp. 3d 411, 448 (D. Conn. 2020).

c. What was the outcome of that litigation?

Response: On May 12, 2020, the district court issued a temporary restraining order, concluding that petitioners had demonstrated a likelihood of success on

their Eighth Amendment claims and requiring the BOP to undertake expedited identification and consideration of medically vulnerable people for transfer to home confinement. *Martinez-Brooks v. Easter,* 459 F. Supp. 3d 411, 448 (D. Conn. 2020). The court reasoned that "by failing to make meaningful use of her home confinement authority, the Warden has failed to implement what appears to be the sole measure capable of adequately protecting vulnerable inmates—a measure the Attorney General directed the BOP to implement 'immediately' and with 'dispatch'—in favor of measures that, even if they were fully and painstakingly implemented, would still leave vulnerable inmates subject to a grave risk to their health." *Id.* at 443. The court held: "Petitioners have thus shown a likelihood of success on the merits on their claim that, with respect to the Medically Vulnerable Subclass, the Warden has disregarded a 'substantial risk of serious harm' by 'failing to take reasonable measures to abate it.'" *Id.* Class counsel subsequently entered into a settlement agreement with the BOP, which set forth a process for continued identification and consideration of medically vulnerable individuals for home confinement under the standards set forth in the court's temporary restraining order. The agreement, which was approved by the court, expired in October 2021.

3. **During your confirmation hearing, you were asked questions related to a letter that you and more than 1,500 others sent to Connecticut Governor Ned Lamont entitled, "Urgent Action Needed to Protect Individuals in Connecticut's Prisons and Jails from Coronavirus-19 Pandemic."**

    a. **Can you explain what you believe the intent was behind the letter and why you signed your name to it?**

    b. **Is it your understanding that the requested actions in the letter were in line with actions taken by other states in response to the unprecedented pandemic?**

    Response to both subparts: To begin, let me state unequivocally that, if confirmed as district judge, I would not hesitate to impose a prison sentence on a criminal defendant where appropriate under the law. I agree wholeheartedly with Congress's directive that imprisonment of some criminal defendants is necessary to incapacitate dangerous offenders, protect the public from further harm, deter the defendant or others from committing crimes, promote respect for the rule of law, and provide just punishment. *See* 18 U.S.C. § 3553(a). In addition, I would not hesitate to order the pretrial detention of a criminal defendant where appropriate under the law. I agree entirely with Congress's directive that pretrial detention of some criminal defendants is necessary based on risk of flight and/or dangerousness. *See* 18 U.S.C. § 3142. It would be my duty if confirmed to faithfully apply the law—including the sentencing and pretrial detention schemes established by Congress—and I would do so without reservation.

As for the letter, I understand it was drafted and sent to the Governor of Connecticut in the very early days of the pandemic to raise concerns about the risk of serious illness and death that people incarcerated in Connecticut faced from COVID and to urge the Governor to take significant action in line with that taken by other states. I did not write or edit the letter and, until my hearing before the Senate Judiciary Committee, I did not recall that my name had been listed as an "endorsing individual"—along with more than 1,500 others. Reviewing the letter today, I regret allowing my name to be added, as the letter does not accurately reflect my views. In particular, the letter's suggestions were overbroad and failed to make expressly clear that all decisions about whether to incarcerate people and whether to release people who are already incarcerated must be conducted in a manner consistent with the law and public safety of people in the community.

As I observed firsthand during my clerkships with the Honorable Michael B. Mukasey, then Chief Judge of the U.S. District Court for the Southern District of New York, and the Honorable Chester J. Straub of the U.S. Court of Appeals for the Second Circuit, the role of a judge is not to make policy or offer policy suggestions. If confirmed as a district judge, my role would be limited to resolving individual cases that are properly before the court by impartially applying the law to the facts as established by the evidence in the record in each case. In the sentencing context, I would follow Congress's directive in 18 U.S.C. § 3553(a) to sentence people convicted of federal crimes in accordance with the sentencing purposes set forth in the statute and after consideration of the federal sentencing guidelines. With respect to pretrial detention, I would follow Congress's directive in 18 U.S.C. § 3142. I would faithfully and impartially follow all precedents of the Supreme Court and Second Circuit.

4. Please describe the efforts you made to locate and share with the Committee documents required for submission in the Senate Judiciary Questionnaire.

Response: In preparing my Senate Judiciary Questionnaire and its attachments, I undertook an extensive effort to locate all responsive documents. My efforts included searching my computer files and emails, searching through hard copies of documents (including going through boxes in my attic), conducting searches on Westlaw, Lexis, and LexisNexis databases, conducting searches through the interface of specific websites (e.g., websites for the Connecticut General Assembly, the Connecticut Sentencing Commission, the Connecticut Judicial Branch, PACER, YouTube), and running dozens of google searches of various versions of my name along with different modifiers. In total, I identified and supplied more than 4,700 pages of materials across more than 400 responsive documents. I regret that my searches did not turn up the letter referenced at my confirmation hearing and apologize to the Committee for the unintentional omission.

Senator Lindsey Graham, Ranking Member
Questions for the Record
Ms. Sarah French Russell Nominee to the United States District Court for the District of Connecticut

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 strongly disagree with that statement. If I am fortunate to be confirmed as a federal district court judge, I would faithfully apply the precedent of the Second Circuit and the Supreme Court in all cases, including in cases involving constitutional issues. The rule of law depends on judges setting aside any personal beliefs and following precedent. That is what I would do.

2. **When asked why he wrote opinions that he knew the Supreme Court would reverse, Judge Stephen Reinhardt's 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 statement. However, it would be improper for a lower court judge to issue an opinion knowing it was contrary to binding precedent. Lower court judges are bound to apply Supreme Court precedent in every case.

3. **Did you sign a letter titled "Urgent Action Needed to Protect Individuals in Connecticut's Prisons and Jails from Coronavirus-19 Pandemic"?**

   a) **If yes, do you agree with the letter's statement that our prison system is "untenable"?**

   b) **If yes, did you, at the time of signing, agree with the statement that Governor Lamont should "[i]mmediately release, to the maximum extent possible, people incarcerated pre-trial and post-conviction"?**

   Response to all subparts: To begin, let me state unequivocally that, if confirmed as district judge, I would not hesitate to impose a prison sentence on a criminal defendant where appropriate under the law. I agree wholeheartedly with Congress's directive that imprisonment of some criminal defendants is necessary to incapacitate dangerous offenders, protect the public from further harm, deter the defendant or others from committing crimes, promote respect for the rule of law, and provide just punishment. *See* 18 U.S.C. § 3553(a). In addition, I would not hesitate to order the pretrial detention of a criminal defendant where appropriate under the law. I agree entirely with Congress's directive that pretrial detention of some criminal defendants is necessary based on risk of flight and/or dangerousness. *See* 18 U.S.C. § 3142. It would be my duty if confirmed to

faithfully apply the law—including the sentencing and pretrial detention schemes established by Congress—and I would do so without reservation.

As for the letter, I understand it was drafted and sent to the Governor of Connecticut in the very early days of the pandemic to raise concerns about the risk of serious illness and death that people incarcerated in Connecticut faced from COVID and to urge the Governor to take significant action in line with that taken by other states. I did not write or edit the letter and, until my hearing before the Senate Judiciary Committee, I did not recall that my name had been listed as an "endorsing individual"—along with more than 1,500 others. Reviewing the letter today, I regret allowing my name to be added, as the letter does not accurately reflect my views. In particular, the letter's suggestions were overbroad and failed to make expressly clear that all decisions about whether to incarcerate people and whether to release people who are already incarcerated must be conducted in a manner consistent with the law and public safety of people in the community.

I did not and do not agree with the letter's statement calling the prison system "untenable." I did not write or edit the letter and would not have used that language had I done so. Regarding the letter's statements about actions to stem the tide of COVID-19 in Connecticut prisons, I understand the call to "immediately release, to the maximum extent possible, people incarcerated pre-trial and post-conviction" to be a call for the Governor to release individuals to home confinement and other forms of supervision to the extent permitted and warranted by law.

As I observed firsthand during my clerkships with the Honorable Michael B. Mukasey, then Chief Judge of the U.S. District Court for the Southern District of New York, and the Honorable Chester J. Straub of the U.S. Court of Appeals for the Second Circuit, the role of a judge is not to make policy or offer policy suggestions. If confirmed as a district judge, my role would be limited to resolving individual cases that are properly before the court by impartially applying the law to the facts as established by the evidence in the record in each case. In the sentencing context, I would follow Congress's directive in 18 U.S.C. § 3553(a) to sentence people convicted of federal crimes in accordance with the sentencing purposes set forth in the statute and after consideration of the federal sentencing guidelines. With respect to pretrial detention, I would follow Congress's directive in 18 U.S.C. § 3142. I would faithfully and impartially follow all precedents of the Supreme Court and Second Circuit.

4. **Do you consider a law student's public endorsement of or praise for an organization listed as a "Foreign Terrorist Organization," such as Hamas or the Popular Front for the Liberation of Palestine, to be a disqualification for a potential clerkship in your chambers? Please provide a yes or no answer. If you would like to include an additional narrative response, you may do so, but only after a yes or no answer. Failure to provide a yes or no answer will be construed as a "no."**

Response: Yes, if I were aware that a candidate for a clerkship had endorsed or praised terrorist organizations such as Hamas, I would not hire the candidate. If I am fortunate enough to be confirmed, I will hire qualified law clerks who respect the rule of law.

5. **In the aftermath of the brutal terrorist attack on Israel on October 7, 2023 the president of New York University's student bar association wrote "Israel bears full responsibility for this tremendous loss of life. This regime of state-sanctioned violence created the conditions that made resistance necessary." Do you consider such a statement, publicly made by a law student, to be disqualifying with regards to a potential clerkship in your chambers? Please provide a yes or no answer. If you would like to include an additional narrative response, you may do so, but only after a yes or no answer. Failure to provide a yes or no answer will be construed as a "no."**

Response: Please see my response to Question 4.

6. **Please describe the relevant law governing when a federal court may entertain and grant a writ of habeas corpus on behalf of a person in custody pursuant to a judgment of a State court.**

Response: Federal courts can entertain an application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a state court only on the ground that the person is in custody in violation of the Constitution or laws or treatises of the United States. 28 U.S.C. § 2254(a). An application for a writ of habeas corpus shall not be granted unless (1) the person has exhausted state administrative remedies or (2) there is either an absence of State corrective processes or circumstances that render such process ineffective. *Id.* § 2254(b)(1). Moreover, the writ shall not be granted with respect to any claim adjudicated on the merits in the state court proceedings unless the adjudication resulted in a decision (1) contrary to or involving an unreasonable application of clearly established Federal law, as determined by the U.S. Supreme Court or (2) based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding. *Id.* § 2254(d).

7. **Please describe the relevant law governing how a prisoner in custody under sentence of a federal court may seek and receive relief from the sentence.**

Response: A prisoner in custody under a sentence of a federal court may move the court to vacate, set aside or correct the sentence on the ground that: (1) it was imposed in violation of the Constitution or federal law; (2) the court lacked jurisdiction to impose it; (3) the sentence is in excess of the statutory maximum; or (4) the sentence is otherwise subject to collateral attack. 28 U.S.C. § 2255(a). Prisoners serving federal sentences may also seek a reduction in sentence pursuant to 18 U.S.C. § 3582(c) in narrow circumstances.

8. **Please explain the facts and holding of the Supreme Court decisions in *Students for Fair Admissions, Inc. v. University of North Carolina* and *Students for Fair Admissions Inc. v. President & Fellows of Harvard College*.**

   Response: In *Students for Fair Admissions, Inc. v. University of North Carolina*, 143 S. Ct. 2141 (2023), Students for Fair Admissions (SFFA) sued the University of North Carolina (UNC) asserting that UNC used race in its undergraduate admission process in violation of the Equal Protection Clause of the Fourteenth Amendment. In *Students for Fair Admissions Inc. v. President & Fellows of Harvard College*, 143 S. Ct. 2141 (2023), SFFA asserted that Harvard used race in its college admission process in violation of Title VI of the Civil Rights Act of 1964. The Supreme Court held that the admissions processes of both schools were unlawful. In particular, the Court concluded that the schools' asserted interest in using race as a factor in admissions was not a compelling interest for purposes of satisfying strict scrutiny because the claimed interests could not be subjected to meaningful judicial review. The Court also concluded that the schools' admissions processes violated the Equal Protection Clause's dual command that race not be used as a negative or a stereotype.

9. **Have you ever participated in a decision, either individually or as a member of a group, to hire someone or to solicit applications for employment?**

   If yes, please list each job or role where you participated in hiring decisions.

   Response: Yes. As a law professor at Quinnipiac University School of Law, I have participated in decisions with my colleagues on the faculty to hire new faculty members. At Quinnipiac, I have also participated in the decision to hire the Legal Clinic's administrative assistant as well as undergraduate assistants, law student summer interns, and research assistants. At Yale Law School, as Director of the Liman Public Interest Program, I participated in decisions to hire administrative staff and student research assistants. At the federal public defender's office, I participated in decisions to hire law student summer interns.

10. **Have you ever given preference to a candidate for employment or for another benefit (such as a scholarship, internship, bonus, promotion, or award) on account of that candidate's race, ethnicity, religion, or sex?**

    Response: No.

11. **Have you ever solicited applications for employment on the basis of race, ethnicity, religion, or sex?**

    Response: No.

12. **Have you ever worked for an employer (such as a law firm) that gave preference to a candidate for employment or for another benefit (such as a scholarship,**

internship, bonus, promotion, or award) on account of that candidate's race, ethnicity, religion, or sex?

Response: To the best of my knowledge, none of my employers used such preferences.

If yes, please list each responsive employer and your role at that employer. Please also describe, with respect to each employer, the preference given. Please state whether you played any part in the employer's decision to grant the preference.

13. Under current Supreme Court and Second Circuit precedent, are government classifications on the basis of race subject to strict scrutiny?

Response: Yes. *See Students for Fair Admissions Inc. v. President & Fellows of Harvard College*, 143 S. Ct. 2141 (2023).

14. Please explain the holding of the Supreme Court's decision in *303 Creative LLC v. Elenis*.

Response: In *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023), the Supreme Court held that Colorado officials could not force the owner of a website design company to create wedding websites for same sex-couples, which she said was inconsistent with her beliefs. The Court concluded that the wedding websites created by the owner constituted "pure speech" and it would violate the owner's rights under the Free Speech Clause of the First Amendment to deploy Colorado's anti-discrimination law to compel her to create websites with messages that were contrary to her beliefs.

15. In *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 642 (1943), Justice Jackson, writing for the Court, said: "*If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein*."

Is this a correct statement of the law?

Response: In *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023), the Supreme Court quoted portions of this passage from *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943), and relied on *Barnett* to conclude that Colorado could not compel speech in that case. My understanding is that *Barnett* remains good law.

16. How would you determine whether a law that regulates speech is "content-based" or "content-neutral"? What are some of the key questions that would inform your analysis?

Response: In determining whether a law that regulates speech is "content-based" or "content-neutral," I would apply the Supreme Court's binding precedent in *Reed v. Town of Gilbert, Ariz*., 576 U.S. 155 (2015) and *City of Austin v. Reagan Nat'l Advert. of Austin, LLC*, 596 U.S. 61 (2022). In *Reed*, the Supreme Court stated that content-based regulations are "those that target speech based on its communicative content." *Id.* at 162. *Reed* observed that "[g]overnment regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed." *Id.* at 163. Courts must consider "whether a regulation of speech 'on its face' draws distinctions based on the message a speaker conveys." *Id.* While "[s]ome facial distinctions based on a message are obvious, defining regulated speech by particular subject matter, . . . others are more subtle, defining regulated speech by its function or purpose." *Id.* Both forms of distinctions are subject to strict scrutiny because they are based on a message a speaker conveys. *Id.*; *see also City of Austin*, 596 U.S. at 76 ("This Court's determination that the City's ordinance is facially content neutral does not end the First Amendment inquiry. If there is evidence that an impermissible purpose or justification underpins a facially content-neutral restriction, for instance, that restriction may be content based.").

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

Response: The Supreme Court has held that "true threats" of violence is a historically unprotected category of speech. True threats are "serious expression[s] conveying that a speaker means to commit an act of unlawful violence." *Counterman v. Colorado*, 600 U.S. 66, 74 (2023) (internal quotation marks omitted; alteration in original). To prosecute someone for making a threat, the First Amendment requires a showing that a reasonable person would understand that the statements were threats. The prosecution does not have to show awareness on the defendant's part that the statements could be understood that way. *Id.* at 81.

18. Under Supreme Court and Second Circuit precedent, what is a "fact" and what sources do courts consider in determining whether something is a question of fact or a question of law?

Response: The Supreme Court has explained that "basic" or "historical" facts address "questions of who did what, when or where, how or why." *U.S. Bank Nat. Ass'n ex rel. CWCapital Asset Mgmt. LLC v. Vill. at Lakeridge, LLC*, 138 S. Ct. 960, 966 (2018). In determining the appropriate standard of review, the Supreme Court has observed that "[a]t least in those instances in which Congress has not spoken and in which the issue falls somewhere between a pristine legal standard and a simple historical fact, the fact/law distinction at times has turned on a determination that, as a matter of the sound administration of justice, one judicial actor is better positioned than another to decide the issue in question." *Miller v. Fenton*, 474 U.S. 104, 114 (1985). Appellate courts will typically review de novo decisions that involved the trial court "amplifying or elaborating on a broad legal standard" and review for clear error decisions that required the trial court

to "marshal and weigh evidence" and "make credibility judgments." *U.S. Bank Nat. Ass'n*, 138 S. Ct. at 967.

19. Which of the four primary purposes of sentencing—retribution, deterrence, incapacitation, and rehabilitation—do you personally believe is the most important?

Response: Sentencing courts are required by statute to consider all four of these primary purposes of sentencing when imposing a sentence. In particular, courts must consider the need for the sentence imposed "to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;" to "afford adequate deterrence to criminal conduct;" "to protect the public from further crimes of the defendant;" and "to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner." 18 U.S.C. § 3553(a)(2). Congress has assigned no one factor greater weight than any other. If I am confirmed, I would consider each of these sentencing factors, along with the federal sentencing guidelines, in determining an appropriate sentence.

20. Please identify a Supreme Court decision from the last 50 years that you think is particularly well reasoned and explain why.

Response: As a district court nominee, I am precluded from expressing any personal views regarding Supreme Court cases that involve issues that could come before me if I am confirmed. I would not want any litigants to think that I have prejudged an issue. *See* Code of Conduct for U.S. Judges, Canon 3(A)(6). If confirmed, I will faithfully apply all binding decisions of the Supreme Court.

21. Please identify a Second Circuit judicial opinion from the last 50 years that you think is particularly well reasoned and explain why.

Response: As a district court nominee, I am precluded from expressing any personal views regarding Second Circuit cases that involve issues that could come before me if I am confirmed. I would not want any litigants to think that I have prejudged an issue. *See* Code of Conduct for U.S. Judges, Canon 3(A)(6). If confirmed, I will faithfully apply all binding decisions of the Second Circuit.

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

Response: This statute relates to picketing or parading and provides: "Whoever, with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty, pickets or parades in or near a building housing a court of the United States, or in or near a building or residence occupied or used by such judge, juror, witness, or court officer, or with such intent uses any sound-truck or similar device or resorts to any other demonstration in or near any such building or residence, shall be fined under this title or imprisoned not more than one year, or both." 18 U.S.C. § 1507.

23. Is 18 U.S.C. § 1507 constitutional?

Response: I have not found any Second Circuit or Supreme Court cases considering a constitutional challenge to 18 U.S.C. § 1507. However, in *Cox v. Louisiana*, 379 U.S. 559 (1965), the Supreme Court upheld the facial validity of a Louisiana statute that the Second Circuit has called "virtually identical to a federal statute." *Picard v. Magliano*, 42 F.4th 89, 103 n.4 (2d Cir. 2022) (citing 18 U.S.C. § 1507). As a district court nominee, I am precluded from offering any personal views about the constitutionality of a federal statute that could come before me if I am confirmed. I would not want any litigants to think that I have prejudged an issue. *See* Code of Conduct for U.S. Judges, Canon 3(A)(6).

24. Is it ever appropriate to consider foreign law in constitutional interpretation? If yes, please describe in which circumstances such consideration would be appropriate.

Response: If confirmed, I would look to the text of the Constitution itself and binding Supreme Court and Second Circuit precedent in considering questions of constitutional interpretation. I would consider foreign law only in instances where the Supreme Court or Second Circuit had instructed it was appropriate to do so. For example, the Supreme Court referenced English law when interpreting the Second Amendment in *New York Rifle & Pistol Ass'n., Inc. v. Bruen*, 142 S. Ct. 2111, 2142 (2022).

25. 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?
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 *New York State Rifle & Pistol Association v. Bruen* correctly decided?
k. Was *Dobbs v. Jackson Women's Health* correctly decided?
l. Were *Students for Fair Admissions, Inc. v. University of North Carolina* and *Students for Fair Admissions Inc. v. President & Fellows of Harvard College* correctly decided?
m. Was *303 Creative LLC v. Elenis* correctly decided?

Response: With the exception of *Roe v. Wade* and *Planned Parenthood v. Casey*, the cases listed above are binding Supreme Court precedent and I would faithfully apply each of these cases if confirmed. *Roe v. Wade* and *Planned Parenthood v. Casey* were overturned by *Dobbs v. Jackson Women's Health.* (The reasoning of *Gonzales v.*

Carhart, which upheld the partial-birth abortion ban against a constitutional challenge, would be analyzed differently under *Dobbs*.) As a district court nominee, I am precluded from expressing any personal views regarding Supreme Court cases that involve issues that could come before me if I am confirmed. I would not want any litigants to think that I have prejudged an issue. *See* Code of Conduct for U.S. Judges, Canon 3(A)(6). However, because de jure racial segregation and bans on interracial marriage are unlikely to come before the courts again, I can share my view that *Brown* and *Loving* were correctly decided.

26. What legal standard would you apply in evaluating whether or not a regulation or statutory provision infringes on Second Amendment rights?

Response: In evaluating whether a provision infringes on Second Amendment rights, I would apply the legal standard set forth by the Supreme Court in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111 (2022). In *Bruen*, the Court rejected means-end scrutiny, stating that "when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct." *Id.* at 2126. To justify a regulation, the government "must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation." *Id.*

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? If so, who?

Response: No.

c. Have you ever been in contact with anyone associated with Demand Justice? If so, who?

Response: Yes. I previously spoke with Christopher Kang, who described the judicial nomination process generally based on his prior experience working in the White House Counsel's Office.

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? If so, who?

Response: No.

c. Have you ever been in contact with anyone associated with the Alliance for Justice? If so, who?

Response: I spoke previously with Jake Faleschini, Vasu Abhiraman, and Nan Aron, who described the nomination process generally.

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?

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: Not applicable.

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.

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? If so, who?

Response: No.

c. Have you ever been in contact with anyone associated with the Open Society Foundations? If so, who?

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? If so, who?

Response: No.

c. Have you ever been in contact with anyone associated with Fix the Court? If so, who?

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: In April 2022, after seeing a notice of an anticipated district court vacancy in the U.S. District Court for the District of Connecticut, I contacted Senator Blumenthal's office to request a copy of an application to be reviewed by the Senators' Advisory Committee. I submitted the application to the Committee through a member of Senator Blumenthal's office on May 9, 2022. I was interviewed by the Advisory Committee on May 12, 2022. I was contacted by Senator Blumenthal's office to arrange an interview with Senator Blumenthal and Senator Murphy, which occurred on June 8, 2022. In late July 2022, Senator Blumenthal's office contacted me to inform me that my name had been provided to the White House Counsel's Office. On August 15, 2022, the White House Counsel's Office informed me that I was moving on to the next stage of the process. Since August 15, 2022, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On October 4, 2023, the President announced his intent to nominate me.

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: Yes. I previously spoke with Christopher Kang, who described the judicial nomination process generally based on his prior experience working in the White House Counsel's Office.

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: Yes. I spoke previously with Jill Dash, who described the nomination process generally.

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. Since you were first approached about the possibility of being nominated, did anyone associated with the Biden administration or Senate Democrats give you advice about which cases to list on your committee questionnaire?

a. If yes,

i. Who?

ii. What advice did they give?

iii. Did they suggest that you omit or include any particular case or type of case in your questionnaire?

Response to all subparts: I spoke with attorneys from Office of Legal Policy about preparing my Questionnaire to submit to the Senate Judiciary Committee. The attorneys recommended that I include cases that reflect the breadth and depth of my litigation experience throughout my nearly 20 years in practice. I independently reviewed my record and included cases that I determined reflected the breadth and depth of my experience.

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

Response: In April 2022, after seeing a notice of an anticipated district court vacancy in the U.S. District Court for the District of Connecticut, I contacted Senator Blumenthal's office to request a copy of an application to be reviewed by the Senators' Advisory Committee. I submitted the application to the Committee through a member of Senator Blumenthal's office on May 9, 2022. I was interviewed by the Advisory Committee on May 12, 2022. I was contacted by Senator Blumenthal's office to arrange an interview with Senator Blumenthal and Senator Murphy, which occurred on June 8, 2022. In late July 2022, Senator Blumenthal's office contacted me to inform me that my name had been provided to the White House Counsel's Office. On August 15, 2022, the White House Counsel's Office informed me that I was moving on to the next stage of the process. Since August 15, 2022, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On October 4, 2023, the President announced his intent to nominate me.

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

Response: I received these questions on November 8, 2023, conducted legal research, reviewed my files, and drafted my responses. I submitted my draft responses to the Office of Legal Policy at the Department of Justice on November 9, 2023, and I received limited feedback. I then finalized and submitted my answers.

Senate Judiciary Committee
Nominations Hearing
November 1, 2023
Questions for the Record
Senator Amy Klobuchar

For Sarah French Russell, nominee to serve as United States District Judge for the District of Connecticut

From 2005 to 2007 you served as Assistant Federal Defender in Connecticut, where you helped to uphold the constitutional rights of indigent defendants, including by participating in five jury trials. As a former prosecutor in Minnesota's largest county, I know the important role that public defenders play in our system of justice.

- **How has this experience shaped your perspective of our criminal justice system and why it is important that our justice system provides counsel for those who cannot afford an attorney?**

  Response: As a law clerk for the Honorable Michael B. Mukasey in the U.S. District Court for the Southern District of New York and for the Honorable Chester J. Straub on the U.S. Court of Appeals for the Second Circuit, I saw the challenges facing individuals who lacked access to quality counsel or any counsel at all. After clerking, I decided to serve clients who could not afford counsel as an Assistant Federal Defender in Connecticut. In that role, I represented indigent clients facing federal criminal charges and handled all stages of cases, including presentments, arraignments, detention hearings, plea proceedings, suppression hearings, trials, sentencings, appeals, and probation/supervised release hearings. I went regularly each week to federal court, and frequently conducted evidentiary hearings and trials. I also had the opportunity to engage in extensive research and writing, as I frequently filed motions and memoranda in the cases that I was handling.

  Through my work as an Assistant Federal Defender, I gained important lawyering skills and also had the opportunity to learn the perspectives of others involved with the system—including prosecutors, law enforcement, victims, probation officers, and mental health professionals. I think my experience litigating federal criminal cases, as well as my understanding of the roles played by others in the system, would be invaluable experience should I be fortunate enough to be confirmed.

  The Constitution's guarantee of the right to counsel for criminal defendants is a bedrock and fundamental right of a free nation. Without competent counsel zealously representing those charged with offenses, our society cannot be confident of the integrity of convictions and the appropriateness of sentences.

Senator Mike Lee
Questions for the Record
Sarah French Russell, Nominee for District Court Judge for the District of Connecticut

1. How would you describe your judicial philosophy?

Response: If I am fortunate to be confirmed, I would approach each case impartially and with an open mind. I would carefully consider the arguments of the parties and decide only the issues that are properly before me. I would closely examine the text of the relevant statutes, regulations, and constitutional provisions at issue and faithfully follow binding precedent from the Supreme Court and Second Circuit. I would ensure that all parties have an opportunity to be heard and are treated fairly and with respect. Finally, I would communicate decisions in a timely manner, ensuring that the court's holding and rationale are clearly expressed.

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

Response: If confirmed as a district judge, my approach in interpreting statutes would be to first determine if there are binding Supreme Court or Second Circuit decisions already interpreting the provision. If not, I would examine the text of the statute, including relevant statutory definitions. If the language is ambiguous, I would look to see how terms have been used elsewhere in the statute and examine dictionaries from the time the statute was enacted. Where the Supreme Court has instructed it is appropriate to do so, I would use canons of statutory interpretation.

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

Response: If confirmed, I would examine the text of the Constitution and binding precedent from Second Circuit and Supreme Court. I would interpret constitutional provisions in line with the methods used by the Supreme Court to interpret the particular provision. In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court explained that, in interpreting the Constitution, courts are "guided by the principle that the 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." *Id.* at 576 (internal quotation marks omitted); *see also id.* at 581 (citing dictionaries from the same time period as ratification to determine the ordinary public meaning of the constitutional text at the time in interpreting the Second Amendment); *see also Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1894 (2021) (Alito, J., concurring) ("And even though we now have a thick body of precedent regarding the meaning of most provisions of the Constitution, our opinions continue to respect the primacy of the Constitution's text.").

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

Response: In interpreting a constitutional provision, I would look to the text of the provision and Supreme Court precedent to determine what method of interpretation the Supreme Court has used in analyzing the provision. In a range of cases, the Supreme Court has looked to original meaning in interpreting constitutional provisions. *See, e.g.*, *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022); *Kennedy v. Bremerton School District*, 142 S. Ct 2407 (2022); *Crawford v. Washington*, 541 U.S. 36 (2004).

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. Please see my response to Question 2. The plain meaning of the text is the starting point and ending point in statutory interpretation. When the text is unambiguous, it has controlling weight.

6. 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 statute or constitutional provision refers to the public understanding of the language at the time of enactment. *See, e.g.*, *Bostock v. Clayton Cnty., Georgia*, 140 S. Ct. 1731, 1750 (2020) ("the law's ordinary meaning at the time of enactment usually governs"); *District of Columbia v. Heller*, 554 U.S. 570, 634-35 (2008).

7. What are the constitutional requirements for standing?

Response: The elements of Article III standing are: (1) the plaintiff has suffered a concrete injury; (2) that injury is fairly traceable to actions of the defendant; and (3) it must be likely and not merely speculative that the injury will be redressed by a favorable decision. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992).

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

Response: Article I, Section 8 enumerates Congress's powers and provides that Congress has the power to make laws that are necessary and proper for carrying out its enumerated duties. *See McCullough v. Maryland*, 17 U.S. 316 (1819).

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

Response: In enacting a statute, Congress is not required to cite a specific constitutional provision for its authority. *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 570 (2012). If I am confirmed, to evaluate whether Congress exceeded its

authority in enacting a law, I would follow precedent of the Supreme Court and Second Circuit. *See, e.g.*, *United States v. Comstock*, 560 U.S. 126, 134 (2010) (holding that to determine "whether the Necessary and Proper Clause grants Congress the legislative authority to enact a particular federal statute," courts should determine "whether the statute constitutes a means that is rationally related to the implementation of a constitutionally enumerated power").

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

Response: Yes, the Supreme Court has held that certain unenumerated rights are protected under the Due Process Clauses of the Fifth and Fourteenth Amendments. To be protected by substantive due process, rights must be "deeply rooted in this country'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, 720-21 (1997). The government may infringe on these fundamental rights only if the infringement is narrowly tailored to serve a compelling state interest. The Supreme Court has recognized various unenumerated rights protected by substantive due process. *See, e.g.*, *Loving v. Virginia*, 388 U.S. 1 (1967) (the right to marry); *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942) (the right to have children); *Meyer v. Nebraska*, 262 U.S. 390 (1923) (the right to direct the upbringing of one's children).

11. What rights are protected under substantive due process?

Response: Please see answer to Question 10.

12. If you believe substantive due process protects some personal rights such as a right to contraceptives, 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: If confirmed, I would determine whether a right is constitutionally protected by reference to binding Supreme Court and Second Circuit precedent. In *Griswold v. Connecticut*, 381 U.S. 479 (1965), the Supreme Court recognized a right to contraception for married couples that the Court found were rooted within various amendments to the Constitution. In *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937), the Supreme Court overruled *Lochner v. New York*, 198 U.S. 45 (1905), concluding that the Constitution did not protect the economic rights at issue in that case. *Lochner* had held that a New York law restricting the number of hours that bakers could work each day violated the right to freedom of contract, which the Court deemed protected by the Fourteenth Amendment.

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

Response: Congress's Commerce Clause powers are located in Article I, Section 8, Clause 3 of the Constitution. Under the Commerce Clause, Congress may "regulate the use of the channels of interstate commerce," "regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce," and "regulate those activities having a substantial relation to interstate commerce, i.e., those activities that substantially affect interstate commerce." *United States v. Lopez*, 514 U.S. 549, 558 (1995). In *Lopez*, the Court struck down the Gun-Free School Zones Act, concluding that "[t]he possession of a gun in a local school zone is in no sense an economic activity that might, through repetition elsewhere, substantially affect any sort of interstate commerce." *Id.* at 567. The Court rejected the Government's argument that Congress had authority to pass the law under the Commerce Clause because gun possession in a school zone could increase crime and the cost of crime affects the national economy. The Court reasoned that "[t]o uphold the Government's contentions here, we would have to pile inference upon inference in a manner that would bid fair to convert congressional authority under the Commerce Clause to a general police power of the sort retained by the States." *Id.* at 567.

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

Response: The Supreme Court has held that race, religion, alienage, and national origin are suspect classes under the Constitution. *See City of Cleburne v. Cleburne Living Ctr*., 473 U.S. 432, 440 (1985); *City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976). In assessing whether a group is a suspect class, the Court has considered whether the group possess 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) (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: Separation of powers is a core feature of the Constitution's structure. The Framers sought to ensure that our system of government contained checks and balances so that power could not be concentrated in one branch. *See Gregory v. Ashcroft*, 501 U.S. 452, 458 (1991) (stating that "the separation and independence of the coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in any one branch"); *Buckley v. Valeo*, 424 U.S. 1, 122 (1976) (noting that the Framers viewed separation of powers as "a self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of the other.). The Constitution's division of authority between the federal government and the states is also a core feature of its design and serves an important role in protecting individual liberties. *See Gregory*, 501 U.S. at 458 (stating that "a healthy balance of

power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front").

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: If I am confirmed, I would carefully consider the arguments of the parties and apply binding precedent from the Second Circuit and Supreme Court in deciding a case in which one branch assumed an authority not granted it by the text of the Constitution. *See, e.g.*, *Bond v. United States*, 564 U.S. 211, 223 (2011) (collecting separation of power cases); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952); *Marbury v. Madison*, 5 U.S. 137 (1803).

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

Response: Empathy should play no role in how a judge finds the facts and applies the law to make a decision in a case. Empathy may play a role in how a judge conducts proceedings in the courtroom. In particular, a judge should treat the parties with respect and ensure that courtroom staff do as well so that the parties feel they were treated fairly in the court process.

18. Which is worse; invalidating a law that is, in fact, constitutional, or upholding a law that is, in fact, unconstitutional?

Response: Judges must avoid both outcomes by scrupulously applying binding precedent to the facts of the case.

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

Response: I have not studied these trends and do not know why they have occurred. If confirmed as a district court judge, I would carefully consider each case that came before me and faithfully apply binding precedent.

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

Response: Black's Law Dictionary defines "judicial review" as a court's power "to review the actions of other branches or levels of government; esp., the courts' power to invalidate legislative and executive actions as being unconstitutional." Black's Law Dictionary (11th ed. 2019). "Judicial supremacy" is defined as "[t]he doctrine that interpretations of the Constitution by the federal judiciary in the exercise of judicial

review, esp. U.S. Supreme Court interpretations, are binding on the coordinate branches of the federal government and the states." *Id. Marbury v. Madison*, 5 U.S. 137 (1803) establishes the principle of judicial review.

21. 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: The Supreme Court has held that elected officials must follow duly rendered judicial decisions. *Cooper v. Aaron*, 358 U.S. 1 (1958). Elected officials should follow their oaths of office and appliable law. They may utilize the process set forth in Article V of the Constitution to amend the Constitution.

22. 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: I understand Hamilton in Federalist 78 to be expressing that it is the role of the judge to apply the law. In contrast, it is the role of the legislature and the executive to make and enforce the law. If I am confirmed, I would not engage in policymaking. I would apply the law, not make it.

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

Response: If I am confirmed as a district court judge, I would have the duty to apply binding Second Circuit and Supreme Court precedent. In instances where the precedent is not directly on point, I would use the framework used by the Second Circuit and Supreme Court in the most analogous cases.

24. 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: The defendant's group identity must play no role in a judge's sentencing analysis. Under 18 U.S.C. § 3553(a), the court must consider the individual circumstances of the case and the offender in determining a sentence.

25. 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 this statement by the Biden Administration and I do not have my own definition of equity. Black's Law Dictionary defines "equity" to include "[f]airness; impartiality; evenhanded dealing." Black's Law Dictionary (11th ed. 2019). If I am confirmed, I would treat all litigants fairly, impartially, and evenhandedly. If a case involving the meaning of the word "equity" were to come before me, I would evaluate the arguments of the parties and faithfully apply binding precedent.

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

Response: Black's Law Dictionary defines "equality" as "[t]he quality, state, or condition of being equal; esp., likeness in power or political status." Black's Law Dictionary (11th ed. 2019). Please see my response to Question 25 for a definition of equity. If a case involving the meaning of the words "equity" or "equality" were to come before me, I would evaluate the arguments of the parties and faithfully apply binding precedent.

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

Response: The Fourteenth Amendment's Equal Protection Clause provides that, "[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the Unites States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV. There is no reference to "equity" in the Fourteenth Amendment and instead only the word "equal." If I am confirmed, I would faithfully follow Supreme Court and Second Circuit precedent in cases relating to the Equal Protection Clause.

28. How do you define "systemic racism?"

Response: I think different people use the term "systemic racism" to mean different things. I do not have my own personal definition. Cambridge Dictionary defines "systemic racism" as "policies and practices that exist throughout a whole society or organization and that result in and support a continued unfair advantage to some people and unfair or harmful treatment of others based on race." Cambridge Dictionary. Merriam-Webster's Dictionary defines it 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 (2022).

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

Response: I do not have my own definition of "critical race theory" and I think it means different things to different people. Black's Law Dictionary 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." Black's Law Dictionary (11th ed. 2019).

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

Response: Please see my responses to Questions 28 and 29.

31. You were a federal public defender for two years, between 2005 and 2007. You have been employed as a law professor for the last sixteen years. While you led legal clinics as a faculty advisor, you have not argued in front of any court for nearly two decades. How would you overcome your lack of consistent legal practice and experience to become an effective federal district judge?

Response: I have litigated cases in court consistently for almost 20 years. After leaving the federal public defender's office in 2007, I became director of the Arthur Liman Public Interest Program at Yale Law School. While at Yale from 2007 to 2010, I litigated cases with legal clinics at the school including the Complex Federal Litigation Clinic, the Prison Legal Services Clinic, the Criminal Defense Project, and the Supreme Court Advocacy Clinic. During that time period, among other litigation activities, I conducted a bench trial with co-counsel in federal court seeking to protect our client's religious freedom rights, argued multiple motions in federal court, and conducted and defended depositions.

Since 2011, I have been a law professor at Quinnipiac University School of Law, where I have represented indigent clients through our legal clinic. In that role, with student assistance, I represent clients in state and federal court and before administrative agencies. I have served as counsel in many federal civil cases, often after the court has asked me to represent a party who has filed a lawsuit pro se. While at Quinnipiac, I have tried multiple cases as chief counsel, argued numerous motions,

conducted many evidentiary hearings, served as class counsel in a class action lawsuit (along with other attorneys), and conducted and defended many depositions.

In addition, for the past eight years, I have served the U.S. District Court for the District of Connecticut as a member and then counsel for the Federal Grievance Committee. The Committee investigates complaints alleging misconduct of attorneys admitted to practice before the Court and makes recommendations to the Court regarding discipline. I was appointed in 2015 by the Honorable Janet C. Hall, then Chief Judge of the U.S. District Court, to serve as a member of the Committee. After I had served for five years, then Chief Judge Stefan R. Underhill appointed me in 2020 to be Counsel to the Committee. I was reappointed as Counsel in 2023. As Counsel, I investigate complaints against attorneys, elicit testimony at evidentiary hearings before the Committee, analyze whether conduct has violated the Rules of Professional Conduct, draft written recommendations for the Committee to provide to the Court regarding appropriate disposition, and conduct evidentiary hearings before the Court on behalf of the Committee. In sum, I have gained extensive experience appearing before courts throughout almost two decades of practice that has prepared me well to transition to the role of federal district judge.

32. In 2017, you signed a letter in opposition to Jeff Sessions' nomination for the position of Attorney General. Various partisan viewpoints were expressed within that letter, including the assertion that voter fraud a "myth," and disapproval of measures meant to protect our southern border. The letter also expressed frustration that Mr. Sessions did not agree with the political aims of the signees, including climate change, abortion, and LGBTQ issues. Do you believe that an individual's qualifications to serve within the federal government depend on their adherence to your progressive political agenda?

Response: I was a signatory on this letter—which I did not write or edit—in 2017 along with nearly 1,500 other law school faculty members. The core message of the letter was to recount the historical fact that the Senate had not confirmed Mr. Sessions to be a federal judge and to suggest that the record before the Senate when it made that determination may be useful in assessing Mr. Sessions' qualifications to be Attorney General of the United States. The third paragraph of the letter lists a series of concerns that "some" of the signatories had. I firmly believe that an individual's qualification to serve within the federal judiciary must depend on, among other things, avoidance of any political agenda.

33. It appears that you signed a 2019 letter entitled "Urgent Action Needed to Protect Individuals in Connecticut's Prisons and Jails from Coronavirus-19 Pandemic." This letter is extremely concerning. The letter called for "a moratorium on incarceration," requesting the Connecticut government "cease adding to the incarcerated population." It calls for the governor to "[i]immediately release . . . pre-trial and post-conviction" offenders. It calls for the release of all prisoners over the age of 55. It calls for the release of illegal immigrants held in detention centers awaiting removal proceedings. Alarmingly,

the letter calls for law enforcement not to charge defendants in possession of large amounts of narcotics. It states that illegal drug users must be able to "ensure they have an accessible several-week supply to prevent the sever effects of withdrawal."

Fentanyl is the leading cause of death for Americans between the ages of 18-45. We are experiencing a crime surge in most major cities across the United States. People are capable of committing crime past the age of 55. Law enforcement nationwide—hamstrung by the "defund the police" movement—battles chronic understaffing. As a federal district court judge, would you be capable of separating the radical positions you supported in the 2019 letter from your judicial duties? Would you use your authority to impose a "moratorium on incarceration?"

Response: To begin, let me state unequivocally that, if confirmed as district judge, I would not hesitate to impose a prison sentence on a criminal defendant where appropriate under the law. I agree wholeheartedly with Congress's directive that imprisonment of some criminal defendants is necessary to incapacitate dangerous offenders, protect the public from further harm, deter the defendant or others from committing crimes, promote respect for the rule of law, and provide just punishment. *See* 18 U.S.C. § 3553(a). In addition, I would not hesitate to order the pretrial detention of a criminal defendant where appropriate under the law. I agree entirely with Congress's directive that pretrial detention of some criminal defendants is necessary based on risk of flight and/or dangerousness. *See* 18 U.S.C. § 3142. It would be my duty if confirmed to faithfully apply the law—including the sentencing and pretrial detention schemes established by Congress—and I would do so without reservation.

As for the letter, I understand it was drafted and sent to the Governor of Connecticut in the very early days of the pandemic to raise concerns about the risk of serious illness and death that people incarcerated in Connecticut faced from COVID and to urge the Governor to take significant action in line with that taken by other states. I did not write or edit the letter and, until my hearing before the Senate Judiciary Committee, I did not recall that my name had been listed as an "endorsing individual"—along with more than 1,500 others. Reviewing the letter today, I regret allowing my name to be added, as the letter does not accurately reflect my views. In particular, the letter's suggestions were overbroad and failed to make expressly clear that all decisions about whether to incarcerate people and whether to release people who are already incarcerated must be conducted in a manner consistent with the law and public safety of people in the community.

As I observed firsthand during my clerkships with the Honorable Michael B. Mukasey, then Chief Judge of the U.S. District Court for the Southern District of New York, and the Honorable Chester J. Straub of the U.S. Court of Appeals for the Second Circuit, the role of a judge is not to make policy or offer policy suggestions. If confirmed as a district judge, my role would be limited to resolving individual cases

that are properly before the court by impartially applying the law to the facts as established by the evidence in the record in each case. In the sentencing context, I would follow Congress's directive in 18 U.S.C. § 3553(a) to sentence people convicted of federal crimes in accordance with the sentencing purposes set forth in the statute and after consideration of the federal sentencing guidelines. With respect to pretrial detention, I would follow Congress's directive in 18 U.S.C. § 3142. I would faithfully and impartially follow all precedents of the Supreme Court and Second Circuit.

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

Questions for the Record for Sarah French Russell, nominated to serve as United States District Judge for the District of Connecticut.

I. Directions

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

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

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

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

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

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

II. Questions

1. Is racial discrimination wrong?

Response: Yes, and it is unlawful under federal statutes and the Constitution.

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

Response: The Supreme Court has held that certain unenumerated rights are protected under the Due Process Clauses of the Fifth and Fourteenth Amendments. To be protected under substantive due process, rights must be "deeply rooted in this country'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, 720-21 (1997); *see also Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2246 (2022). If I am confirmed and an issue regarding unenumerated rights were to come before me, I would faithfully apply the *Glucksberg* test along with any relevant Supreme Court and Second Circuit precedent.

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

Response: I have not served as a judge previously and have not researched the philosophies of the justices on the Warren, Burger, Rehnquist, and Roberts Courts. If I am fortunate to be confirmed, I would approach each case impartially and with an open mind. I would carefully consider the arguments of the parties and decide only the issues that are properly before me. I would closely examine the text of the relevant statutes, regulations, and constitutional provisions at issue and faithfully follow binding precedent from the Supreme Court and Second Circuit. I would ensure that all parties have an opportunity to be heard and are treated fairly and with respect. Finally, I would communicate decisions in a timely manner, ensuring that the court's holding and rationale are clearly expressed.

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

Response: Black's Law Dictionary defines "originalism" as "[t]he doctrine that words of a legal instrument are to be given the meanings they had when they were adopted" and as "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." Black's Law Dictionary (11th ed. 2019). I do not attach any particular label to myself. If confirmed, I would identify binding precedent and carefully apply it in any case involving constitutional interpretation, including Supreme Court precedent in various contexts that look to original public meaning. *See, e.g.*, *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111 (2022); *Crawford v. Washington*, 541 U.S. 36 (2004).

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

Response: I think "living constitutionalism" means different things to different people. Black's Law Dictionary defines "living constitutionalism" as "[t]he doctrine that the Constitution should be interpreted and applied in accordance with changing circumstances and, in particular, with changes in social values." Black's Law Dictionary (11th ed. 2019). I do not attach any particular label to myself. If confirmed, I would identify binding precedent and carefully apply it in any case involving constitutional interpretation.

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

Response: If I were confirmed and presented with a constitutional issue not resolved by Supreme Court or Second Circuit precedent, I would look at the text of the provision and interpret it in a manner consistent with the methods of interpretation that the Supreme Court has used in the most analogous circumstances. The Supreme Court has looked to original public meaning in various contexts including with respect to rights under the Second Amendment and the Confrontation Clause. *See, e.g.*, *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111 (2022); *Crawford v. Washington*, 541 U.S. 36 (2004).

7. Is the public's current understanding of the Constitution or of a statute ever relevant when determining the meaning of the Constitution or a statute? If so, when?

Response: If confirmed, I would follow Supreme Court and Second Circuit precedent with respect to questions of constitutional interpretation. The Supreme Court has stated that the text of the Constitution "offers a fixed standard for ascertaining what our founding document means." *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228, 2245 (2022) (internal quotation marks omitted). In addition, the Court "normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment." *Bostock v. Clayton County*, 140 S. Ct. 1731, 1738 (2020). In considering a constitutional issue, I would take into account contemporary community standards when directed to do so by binding precedent. *See, e.g.*, *Miller v. California*, 413 U.S. 15, 24 (1973) (stating that contemporary community standards are relevant to whether materials are obscene and thus unprotected by the First Amendment); *Roper v. Simmons*, 543 U.S. 551, 560 (2005) (requiring consideration of "evolving standards of decency" when evaluating an Eighth Amendment challenge).

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

Response: The Supreme Court has stated that "[c]onstitutional rights are enshrined with the scope they were understood to have when the people adopted them." *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2136 (2022) (internal quotation marks

omitted). Changing the meaning of the Constitution requires amendment through Article V. That said, the Supreme Court has explained that the Constitution is an enduring document that applies to factual circumstances the Founders may not have anticipated. *See id.* at 2132 ("[T]he Founders created a Constitution . . . intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs. Although its meaning is fixed according to the understandings of those who ratified it, the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated.") (internal quotation marks and citations omitted). For example, the Fourth Amendment protects individuals from searches made possible only through advances in technology. *See Kyllo v. United States*, 533 U.S. 27 (2001).

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

Response: Yes, *Dobbs v. Jackson Women's Health Organization* is binding precedent and I would faithfully apply it if confirmed.

a. Was it correctly decided?

Response: As a district court nominee, I am precluded from expressing any personal views regarding Supreme Court cases that involve issues that could come before me if I am confirmed. I would not want any litigants to think that I have prejudged an issue. *See* Code of Conduct for U.S. Judges, Canon 3(A)(6). *Dobbs v. Jackson Women's Health Organization* is binding precedent and I would faithfully apply it if confirmed.

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

Response: Yes, *New York Rifle & Pistol Association v. Bruen* is binding precedent and I would faithfully apply it if confirmed.

a. Was it correctly decided?

Response: As a district court nominee, I am precluded from expressing any personal views regarding Supreme Court cases that involve issues that could come before me if I am confirmed. I would not want any litigants to think that I have prejudged an issue. *See* Code of Conduct for U.S. Judges, Canon 3(A)(6). *New York Rifle & Pistol Association v. Bruen* is binding precedent and I would faithfully apply it if confirmed.

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

Response: Yes, *Brown v. Board of Education* is binding precedent and I would faithfully apply it if confirmed.

a. Was it correctly decided?

Response: Because the issue of de jure racial segregation is unlikely to come before the courts again, Canon 3(A)(6) of the Code of Conduct for U.S. Judges permits me to share my view that *Brown* was correctly decided. *Brown v. Board of Education* is binding precedent and I would faithfully apply it if confirmed.

12. Is the Supreme Court's ruling in *Students for Fair Admissions v. Harvard* settled law?

Response: Yes, *Students for Fair Admissions v. Harvard* is binding precedent and I would faithfully apply it if confirmed.

a. Was it correctly decided?

Response: As a district court nominee, I am precluded from expressing any personal views regarding Supreme Court cases that involve issues that could come before me if I am confirmed. I would not want any litigants to think that I have prejudged an issue. *See* Code of Conduct for U.S. Judges, Canon 3(A)(6). *Students for Fair Admissions v. Harvard* is binding precedent and I would faithfully apply it if confirmed.

13. Is the Supreme Court's ruling in *Gibbons v. Ogden* settled law?

Response: Yes, *Gibbons v. Ogden* is binding precedent and I would faithfully apply it if confirmed.

a. Was it correctly decided?

Response: As a district court nominee, I am precluded from expressing any personal views regarding Supreme Court cases that involve issues that could come before me if I am confirmed. I would not want any litigants to think that I have prejudged an issue. *See* Code of Conduct for U.S. Judges, Canon 3(A)(6). *Gibbons v. Ogden* is binding precedent and I would faithfully apply it if confirmed.

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

Response: Release and detention determinations in federal criminal cases are governed by the Bail Reform Act of 1984. The Act provides for a presumption of pretrial detention for defendants meeting criteria set forth in 18 U.S.C. § 3142(e), which include, *inter alia*, that there is probable cause to believe the defendant has committed a controlled substance

offense with a statutory maximum of ten years or more, certain weapons offenses; certain terrorism and human trafficking offenses, or certain offenses involving minor victims.

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

Response: In *United States v. Salerno*, 481 U.S. 739 (1987), the Supreme Court upheld the constitutionality of the Bail Reform Act observing that Congress "perceived pretrial detention as a potential solution to a pressing societal problem" and "[t]here is no doubt that preventing danger to the community is a legitimate regulatory goal." *Id.* at 747. I am not aware of Second Circuit or Supreme Court cases specifically determining the policy rationales underlying the presumption of pretrial detention for defendants changed with certain offenses.

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

Response: Yes, there are identifiable limits on what the government may require or impose on private institutions. The Supreme Court has held that laws that are not neutral toward religion or generally applicable are subject to strict scrutiny pursuant to the Free Exercise Clause of the First Amendment. *See Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021). In addition, the government may not act in a manner that is hostile or shows bias towards religious beliefs. *See Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2018). In addition, the Religious Freedom Restoration Act provides that, as to action by the federal government, strict scrutiny applies where action imposes a substantial burden on religion—even where the action is neutral or generally applicable. *See Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014). The Religious Land Use and Institutionalized Persons Act imposes identifiable limits on actions that state government can take. *See Holt v. Hobbs*, 135 S. Ct. 133 (2015). Finally, the Supreme Court has recognized a ministerial exception to employment laws, which protects the autonomy of religious institutions "with respect to internal management decisions that are essential to the institution's central mission." O*ur Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049 (2020).

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

Response: Under the First Amendment's Free Exercise Clause, the government may not "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." M*asterpiece Cakeshop v. Colorado Civil Rights Commission*, 138 S. Ct. 1719, 1731 (2018). Moreover, any law that treats any comparable secular activity more favorably than religious exercise is subject to strict scrutiny. *See Tandon v. Newsom*, 141 S. Ct. 1294 (2021). In determining whether the government action survives strict scrutiny, courts cannot "assume the worst when people go to worship but assume the best when people go to work." *Id.* at 1296 (internal quotation marks omitted).

17. 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: The Supreme Court held in *Roman Catholic Diocese of Brooklyn*, 141 S. Ct. 63 (2020), that the religious organizations seeking relief from the executive order were entitled to a preliminary injunction. The Court determined that the organizations were likely to succeed on the merits of their claim under the Free Exercise Clause. The regulations were not neutral and thus subject to strict scrutiny because they singled out houses of worship for "especially harsh treatment" and statements made in connection with adopting the regulations could be viewed as targeting the ultra-Orthodox Jewish community. Applying strict scrutiny, the Court determined that the regulations were not narrowly tailored because "[n]ot only is there no evidence that the applicants have contributed to the spread of COVID-19 but there are many other less restrictive rules that could be adopted to minimize the risk to those attending religious services." *Id.* at 67. Finally, the Court held that any loss of First Amendment freedom constituted irreparable harm and the state had failed to show the injunction would harm the public.

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

Response: In *Tandon v. Newsom*, 141 S. Ct. 1294 (2021), the Supreme Court enjoined California from enforcing its COVID private-gathering restrictions on plaintiffs who wished to gather in their homes for religious worship. The Court held 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." *Id.* at 1296 (emphasis in original). The Court determined the regulations were not narrowly tailored. The Court reasoned: "Where the government permits other activities to proceed with precautions, it must show that the religious exercise at issue is more dangerous than those activities even when the same precautions are applied. Otherwise, precautions that suffice for other activities suffice for religious exercise too." *Id.* In other words, courts may not "assume the worst when people go to worship but assume the best when people go to work." *Id.* (internal quotation marks omitted).

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

Response: Yes. Americans have the right to religious beliefs outside the walls of their houses of worship and homes. *See, e.g.*, *Kennedy v. Bremerton School District*, 142 S. Ct.

2407 (2022).

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

Response: In *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2018), the Supreme Court held that the Colorado Civil Rights Commission's enforcement order against a cakemaker who declined to create a cake for a same-sex wedding violated the cakemaker's rights under Free Exercise Clause. In particular, the Court determined that the Commission showed hostility to the cakemaker's sincere religious beliefs and thus "violated the State's duty under the First Amendment not to base laws or regulations on hostility to a religion or religious viewpoint."

21. 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: Religious beliefs are protected under the Free Exercise Clause and Religious Freedom Restoration Act as long as they are sincerely held—i.e., reflect an honest conviction. *See Frazee v. Illinois Dep't of Emp. Sec*., 489 U.S. 829, 834 (1989). The beliefs do not need to be consistent with a particular faith tradition. *See id.* at 834 (1989) ("[W]e reject the notion that to claim the protection of the Free Exercise Clause, one must be responding to the commands of a particular religious organization."); *Burwell v. Hobby Lobby Stores, Inc*., 573 U.S. 682, 724 (2014) (stating that the court's role is limited to determining if a person's religious belief is an "honest conviction," not whether that belief is reasonable); *see also Ford v. McGinnis*, 352 F.3d 582, 590 (2d Cir. 2003) (reversing district court, holding that "[b]y looking behind [plaintiff's] sincerely held belief, the district court impermissibly confronted what is, in essence, the 'ecclesiastical question' of whether, under Islam, the postponed meal retained religious meaning").

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

Response: Yes.

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

Response: Yes.

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

Response: It is my understanding that the Catholic Church opposes abortion.

22. 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 (2020), the Supreme Court held that the ministerial exception to employment discrimination laws, which protects the autonomy of religious institutions "with respect to internal management decisions that are essential to the institution's central mission," *id.* at 2060, applied to two grade-school teachers at religious schools. At the schools, which had religious missions, the teachers integrated religion into their lessons and performed vital religious duties. The Court held that in determining the applicability of the ministerial exception to an employee's position, courts should take "all relevant circumstances into account . . . to determine whether each particular position implicated the fundamental purpose of the exception." *Id.* at 2067. The Court concluded that "[w]hen a school with a religious mission entrusts a teacher with the responsibility of educating and forming students in the faith, judicial intervention into disputes between the school and the teacher threatens the school's independence in a way that the First Amendment does not allow." *Id.* at 2069.

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

Response: In *Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2021), the Supreme Court held that City's contractual non-discrimination requirement burdened Catholic Social Services's (CSS) religious exercise and did not qualify as generally applicable. Applying strict scrutiny and assessing the government interest at stake, the Court determined that the question "is not whether the City has a compelling interest in enforcing its non-discrimination policies generally, but whether it has such an interest in denying an exception to CSS." *Id.* at 1882. Concluding that the City lacked such an interest, the Court held that the actions of the City violated the Free Exercise Clause.

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

Response: In *Carson v. Makin*, 142 S. Ct. 1987 (2022), the Court held that Maine's non-sectarian requirement for its tuition assistance program violated the Free Exercise Clause. Under the program, parents of children in school districts without high schools could receive tuition assistance for private school. However, Maine excluded schools from the program if the school was associated with a particular faith or belief system and promoted that system or presented classroom material through that lens. The Supreme Court held that strict scrutiny applied and Maine failed to show a compelling interest to

justify the burden on religion. The Court reasoned that an "interest in separating church and state more fiercely than the Federal Constitution . . . cannot qualify as compelling in the face of the infringement of free exercise." *Id.* at 1998 (internal quotation marks omitted). In *Carson*, the Court rejected any distinction between "solely status-based religious discrimination" and "a use-based restriction"—concluding both offended the Constitution. *Id.* at 2000.

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

Response: In *Kennedy v. Bremerton School District*, 142 S. Ct. 2407 (2022), the Supreme Court held that a school district violated the Free Exercise and Free Speech Clauses of the First Amendment when it fired a high school football coach for knelling at midfield after games to offer a quiet prayer. In so holding, the Court observed that a decision by the school district to allow such a prayer would not violate the Establishment Clause, which was the school's professed reason for disallowing the prayer. In *Kennedy*, the Court officially abandoned the test for Establishment Clause violations set forth in *Lemon v. Kurtzman*, 403 U. S. 602 (1971), stressing that the Establishment Clause should be interpreted by reference to historical practice and understandings. While coercion to attend church or engage in a formal religious exercise are "among the foremost hallmarks of religious establishments the framers sought to prohibit when they adopted the First Amendment," the Court determined that the football coach's "private religious exercise did not come close to crossing any line one might imagine separating protected private expression from impermissible government coercion." *Id.* at 2429.

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

Response: In *Mast v. Fillmore County*, 141 S. Ct. 2430 (2021), the Supreme Court granted certiorari and vacated the lower court's decision, remanding for further consideration in light of *Fulton v. Philadelphia*, 141 S. Ct. 1868 (2021). At issue were requirements by county officials for Amish farmers to adopt modern technology or risk penalties, including potential loss of their farms. Justice Gorsuch concurred to "highlight a few issues the lower courts and administrative authorities may wish to consider on remand." *Mast*, 141 S. Ct. at 2430. As Justice Gorsuch explained, under the Religious Land Use and Institutionalized Persons Act (RLUIPA), the government had the burden of showing its regulations were narrowly tailored and served a compelling government interest. Referencing the Court's holding in *Fulton*, Justice Gorsuch stressed that courts cannot rely on "broadly formulated" government interests but must "scrutinize the asserted harm of granting specific exemptions to particular religious claimants." *Id.* at 2532. He concluded by stating that "RLUIPA prohibits governments from infringing sincerely held religious beliefs and practices except as a last resort" and "[i]n this country, neither the Amish nor anyone else should have to choose between their farms and their faith."

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

Response: As a judicial nominee, I am precluded from opining on the proper interpretation of Section 1507 because I would not want litigants to think I prejudged the issue if it were to come before me. *See* Code of Conduct for U.S. Judges, Canon 3(A)(6). I am aware that a state statute "modeled after" Section 1507 was held to be facially constitutional in *Cox v. Louisiana*, 379 U.S. 559, 561 (1965). *See also Picard v. Magliano*, 42 F.4th 89, 103 n.4 (2d Cir. 2022) (calling the Louisiana statute at issue in *Cox* "virtually identical to a federal statute").

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

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

Response: No.

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

Response: No.

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

Response: No.

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

Response: No.

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

Response: Yes.

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

Response: Yes.

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

Response: Under the Appointments Clause of the Constitution, the President has the authority to make political appointments with the advice and consent of the Senate. As a district court nominee, I am precluded from expressing any personal views regarding issues that could come before me if I am confirmed. I would not want any litigants to think that I have prejudged an issue. *See* Code of Conduct for U.S. Judges, Canon 3(A)(6). If I am confirmed and a question regarding the lawfulness of a political appointment were to come before me, I would faithfully apply Supreme Court and Second Circuit precedent.

32. If a program or policy has a racially disparate outcome, is this evidence of either purposeful or subconscious racial discrimination?

Response: Disparate impact claims are cognizable under certain federal anti-discrimination laws. *See, e.g.*, *Texas Dep't of Hous. & Cmty. Affs. v. Inclusive Cmtys. Project, Inc*., 576 U.S. 519, 539 (2015). I am not aware of Supreme Court or Second Circuit law addressing subconscious racial discrimination. If confirmed, I would faithfully apply any binding Supreme Court and Second Circuit precedent to any such issue that is properly raised in a case before me.

33. Do you believe that Congress should increase, or decrease, the number of justices on the U.S. Supreme Court? Please explain.

Response: Whether Congress should change the number of justices on the U.S. Supreme Court is a question for Congress. If confirmed, I would faithfully follow the decisions of the Supreme Court, regardless of the number of justices on the Court.

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

Response: No.

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

Response: The Supreme Court has held that the Second Amendment protects an individual's right to keep and bear arms for self-defense, both in one's home and in public. *See District of Columbia v. Heller*, 554 U.S. 50 (2008); *McDonald v. Chicago*, 561 U.S. 742 (2010); *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022).

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

Response: In *District of Columbia v. Heller*, 554 U. S. 570 (2008), *McDonald v. Chicago*, 561 U. S. 742 (2010), *New York State Rifle & Pistol Association v. Bruen***,** 142 S. Ct. 2111 (2022), the Supreme Court held that the Second and Fourteenth Amendments protect an individual's right to keep and bear arms for self-defense. The cases hold that when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. Second Amendment rights are not subject to means-end scrutiny. Rather, to justify a regulation, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulations. The Court in *Heller* struck down laws banning handgun possession in the home and prohibiting people from rendering lawful firearms in their homes operable for immediate self-defense. In *McDonald*, the Court remanded the case for the Seventh Circuit to determine if Chicago's handgun ban was unconstitutional. In *Bruen*, the Court invalidated New York licensing statute because it required a showing of some greater need than the general population to carry a handgun.

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

Response: Yes. *See District of Columbia v. Heller*, 554 U.S. 570, 602 (2008); *McDonald v. City of Chicago*, 561 U.S. 742, 778 (2010); *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111, 2156 (2022).

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

Response: No. *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022).

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

Response: No. *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022).

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

Response: The President has the executive power to enforce laws under Article II of the Constitution. The executive branch has broad discretion regarding decisions relating to enforcement. *See Wayte v. United States*, 470 U.S. 598, 607 (1985). As a district court nominee, I am precluded from expressing any personal views regarding issues that could come before me if I am confirmed. I would not want any litigants to think that I have prejudged an issue. *See* Code of Conduct for U.S. Judges, Canon 3(A)(6). If confirmed, I would faithfully apply binding precedent of the Supreme Court and Second Circuit to any case before me.

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

Response: Black's Law Dictionary defines "prosecutorial discretion" as "[a] prosecutor's power to choose from the options available in a criminal case, such as filing charges, prosecuting, not prosecuting, plea-bargaining, and recommending a sentence to the court." Black's Law Dictionary (11th ed. 2019). "Administrative rule" is defined as "[a]n officially promulgated agency regulation that has the force of law" and defines administrative "rulemaking" as "[t]he process used by an administrative agency to formulate, amend, or repeal a rule or regulation." *Id.*

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

Response: No. The Federal Death Penalty Act of 1994 permits imposition of the death penalty in some circumstances. *See* 18 U.S.C. § 3591. The President does not have the authority to unilaterally change federal statute.

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

Response: *Alabama Association of Realtors*, 141 S. Ct. 2485 (2021), concerned a nationwide moratorium of evictions that had been promulgated by the Centers for Disease Control (CDC) during the COVID pandemic. The district court vacated the moratorium on the ground that the CDC had exceeded its authority in imposing the moratorium but stayed its decision to allow the government to appeal. The Supreme Court vacated the stay, which rendered enforceable the district court's judgment. The Supreme Court reasoned that the plaintiffs were virtually certain to succeed on the merits of their claim that the Public Health Service Act did not provide the CDC with authority to impose a moratorium on evictions. Instead, the text of the Act gave the CDC authority only to take measures that "directly relate to preventing the interstate spread of disease by identifying, isolating, and destroying the disease itself." *Id.* at 2488. Moreover, the Court reasoned that even if the text were ambiguous, one would expect "Congress to speak clearly when authorizing an agency to exercise powers of vast economic and political significance." *Id.* at 2489.

44. Is it appropriate for a prosecutor to publicly announce that they are going to prosecute a member of the community before they even start an investigation as to that person's conduct?

Response: As a district court nominee, it is not appropriate for me to comment on decisions of prosecutors. If confirmed, I would faithfully adjudicate each case that comes before me. Were an issue regarding prosecutorial decisionmaking to come before me, I would apply binding Supreme Court and Second Circuit precedent.

45. At your November 1, 2023 nomination hearing, you were confronted with a letter entitled "Urgent Action Needed to Protect Individuals in Connecticut's Prisons and Jails from Coronavirus-19 Pandemic" that you did not disclose to the committee.

The letter contains radical policy positions that would endanger public safety. Why did you fail to disclose this letter?

Response: In preparing my Senate Judiciary Questionnaire and its attachments, I undertook an extensive effort to locate all responsive documents. My efforts included searching my computer files and emails, searching through hard copies of documents (including going through boxes in my attic), conducting searches on Westlaw, Lexis, and LexisNexis databases, conducting searches through the interface of specific websites (e.g., websites for the Connecticut General Assembly, the Connecticut Sentencing Commission, the Connecticut Judicial Branch, PACER, YouTube), and running dozens of google searches of various versions of my name along with different modifiers. In total, I identified and supplied more than 4,700 pages of materials across more than 400 responsive documents. I regret that my searches did not turn up the letter referenced at my confirmation hearing and apologize to the Committee for the unintentional omission.

46. Please list, with specificity, all organizations and governmental agencies that assisted you in assembling your letters, documents, and other materials in support of your Senate Judiciary Questionnaire (i.e. White House Counsel's Office, Office of Legal Policy, etc.).

Response: I assembled the materials in support of my Senate Judiciary Questionnaire myself using the process described in response to Question 45. In working on the Questionnaire, I was in communication with career attorneys at the Department of Justice's Office of Legal Policy for guidance on what the prompts in the Questionnaire were seeking. Staff from the Office of Legal Policy compiled the documents I provided into a single PDF document to provide to the Committee.

47. The letter you signed entitled "Urgent Action Needed to Protect Individuals in Connecticut's Prisons and Jails from Coronavirus-19 Pandemic" urged the State of Connecticut to "Declare a Moratorium on Incarceration," in which the Governor would "issue an executive order to direct State's Attorney's Offices and law enforcement entities, including town and city police departments *and any federal law enforcement entity operating within the state*, to immediately cease adding to the incarcerated population."

a. This letter did not make any sort of distinction between which classes of crimes or types of offenses would be subject to the proposed moratorium, correct?

b. Do you believe that placing a moratorium on sending people to jail or prison population would decrease public safety?

c. Do you acknowledge that a moratorium on sending people to jail or prison would almost certainly result in a preventable loss of innocent life?

Response to all subparts: To begin, let me state unequivocally that, if confirmed as district judge, I would not hesitate to impose a prison sentence on a criminal

defendant where appropriate under the law. I agree wholeheartedly with Congress's directive that imprisonment of some criminal defendants is necessary to incapacitate dangerous offenders, protect the public from further harm, deter the defendant or others from committing crimes, promote respect for the rule of law, and provide just punishment. *See* 18 U.S.C. § 3553(a). In addition, I would not hesitate to order the pretrial detention of a criminal defendant where appropriate under the law. I agree entirely with Congress's directive that pretrial detention of some criminal defendants is necessary based on risk of flight and/or dangerousness. *See* 18 U.S.C. § 3142. It would be my duty if confirmed to faithfully apply the law—including the sentencing and pretrial detention schemes established by Congress—and I would do so without reservation.

As for the letter, I understand it was drafted and sent to the Governor of Connecticut in the very early days of the pandemic to raise concerns about the risk of serious illness and death that people incarcerated in Connecticut faced from COVID and to urge the Governor to take significant action in line with that taken by other states. I did not write or edit the letter and, until my hearing before the Senate Judiciary Committee, I did not recall that my name had been listed as an "endorsing individual"—along with more than 1,500 others. Reviewing the letter today, I regret allowing my name to be added, as the letter does not accurately reflect my views. In particular, the letter's suggestions were overbroad and failed to make expressly clear that all decisions about whether to incarcerate people and whether to release people who are already incarcerated must be conducted in a manner consistent with the law and public safety of people in the community.

As I observed firsthand during my clerkships with the Honorable Michael B. Mukasey, then Chief Judge of the U.S. District Court for the Southern District of New York, and the Honorable Chester J. Straub of the U.S. Court of Appeals for the Second Circuit, the role of a judge is not to make policy or offer policy suggestions. If confirmed as a district judge, my role would be limited to resolving individual cases that are properly before the court by impartially applying the law to the facts as established by the evidence in the record in each case. In the sentencing context, I would follow Congress's directive in 18 U.S.C. § 3553(a) to sentence people convicted of federal crimes in accordance with the sentencing purposes set forth in the statute and after consideration of the federal sentencing guidelines. With respect to pretrial detention, I would follow Congress's directive in 18 U.S.C. § 3142. I would faithfully and impartially follow all precedents of the Supreme Court and Second Circuit.

48. In another part of the letter, you demand the Governor release all people in state custody that were set to be turned over to ICE, and declare a moratorium on all future transfers.

a. Do you stand by that recommendation?

Response: Please see my response to Question 47. As discussed above, I think the

suggestions contained in the letter were overbroad and should have made clear that incarceration and release decisions should be consistent with the law and public safety of the broader community.

b. If yes, how can you commit to upholding our Nation's immigration laws?

Response: Please see my response to Questions 47 and 48(a). If confirmed, I would faithfully apply the law—including the Nation's immigration laws—and would do so without reservation.

49. In another part of the letter, you urge "the need for sustained action to shrink [the penal system's] scale, size, and scope."

a. Do you stand by this statement?

Response: Please see my response to Question 47. As discussed above, I think the suggestions contained in the letter were overbroad and should have made clear that incarceration and release decisions should be consistent with the law and public safety of the broader community.

b. What action or actions do you recommend to "shrink" the American penal system?

Response: Please see my response to Question 47.

50. You signed two letters opposing Justice Brett Kavanaugh's Supreme Court confirmation. The second letter argued that Justice Kavanaugh lacked the "temperament" to serve on the High Court.

a. Do you still believe that Justice Kavanaugh lacks the temperament to serve on the Supreme Court?

b. Do you believe a judicial nominee who fails to disclose incriminating documents in relation to their nomination displays the proper temperament to serve as a federal judge?

c. Do you wish to apologize to Justice Kavanaugh for signing those letters?

Response to all subparts: Justice Kavanaugh was duly appointed as a U.S. Supreme Court Justice. He was legitimately confirmed through the process set forth in the Constitution and I would faithfully follow any opinions written by him as I would the opinions of all Supreme Court Justices. I have a deep respect for the authority of the Supreme Court—including opinions authored or joined by Justice Kavanaugh—and fully understand the duties of district court judges to follow precedent. The rule of law depends on it.

The letter that you reference was signed by more than 2,400 law professors around the country. I did not write or edit the letter but added my name to it. The letter largely related to process concerns arising from Justice Kavanaugh's confirmation hearing. My experience as a judicial nominee (albeit a nominee for a lower court position) has given me a greater understanding of the nomination process and a deeper appreciation for the challenges of this process for both the Senate charged with evaluating nominees and for the nominees themselves. It is ultimately the Senate's duty to evaluate a judicial nominee's temperament and suitability for a judicial position—not the job of law professors—and I appreciate that it can be a difficult one.

Regarding production of documents to the Committee, please see my Response to Question 45.

Senator Josh Hawley
Questions for the Record

Sarah French Russell
Nominee, U.S. District Judge for the District of Connecticut

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

   Response: No. Instead, I have represented a client seeking to enforce her rights under the Religious Freedom Restoration Act. *See Forde v. Baird*, 720 F. Supp. 2d 170 (D. Conn. 2010) (granting relief to plaintiff on her RFRA claim).

   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.

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

   Response: The Supreme Court has looked to original public meaning in various contexts including with respect to the Second Amendment and the Confrontation Clause. *See, e.g.*, *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111 (2022); *Crawford v. Washington*, 541 U.S. 36 (2004). If confirmed, I would faithfully follow binding Supreme Court and Second Circuit precedent that require a court to consider original public meaning when interpreting constitutional provisions.

3. **Do you 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: If confirmed as a district judge, my approach in interpreting statutes would be to first determine if there are binding Supreme Court or Second Circuit decisions already interpreting the provision. If not, I would examine the text of the statute, including relevant statutory definitions. If the language is ambiguous, I would look to see how terms have been used elsewhere in the statute and examine dictionaries from the time the statute was enacted. Where the Supreme Court has instructed it is appropriate to do so, I would use canons of statutory interpretation. Finally, if ambiguities remain, I would look to legislative history, but only to the extent the Supreme Court and Second Circuit allows it. The Supreme Court has cautioned that "legislative history is itself often murky, ambiguous, and contradictory." *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005). The Supreme Court has also advised that some forms of legislative history less probative than others. *See, e.g.*, *NLRB v. SW Gen., Inc.*, 137 S. Ct. 929, 943

(2017) ("[F]loor statements by individual legislators rank among the least illuminating forms of legislative history.").

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

Response: If confirmed, I would look to the text of the Constitution itself and binding U.S. Supreme Court and Second Circuit precedent in considering a question of constitutional interpretation. I would consider foreign law only if the Supreme Court or Second Circuit had instructed it was appropriate to do so. For example, the Supreme Court referenced English law when interpreting the Second Amendment in *New York Rifle & Pistol Ass'n., Inc. v. Bruen*, 142 S. Ct. 2111, 2142 (2022).

4. 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: To establish that an execution protocol violates the Eighth Amendment's prohibition on cruel and unusual punishment, a plaintiff must: (1) "establish that the State's method of execution presents a 'substantial risk of serious harm'—severe pain over and above death itself"; and (2) "'identify an alternative [method] that is feasible, readily implemented, and in fact significantly reduce[s]' the risk of harm involved." *Nance v. Ward*, 142 S. Ct. 2214, 2220 (2022) (quoting *Glossip v. Gross*, 576 U.S. 863, 877 (2015)) (alterations in original); *see also Bucklew v. Precythe*, 139 S. Ct. 1112, 1126 (2019) ("*Glossip* expressly held that identifying an available alternative is a requirement of all Eighth Amendment method-of-execution claims alleging cruel pain. And just as binding as this holding is the reasoning underlying it. Distinguishing between constitutionally permissible and impermissible degrees of pain, *Baze* and *Glossip* explained, is a necessarily comparative exercise.") (internal quotation marks omitted).

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

Response: Yes. Please see my response to Question 4.

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

Response: No. The Supreme Court held that habeas corpus petitioners have no constitutional right to obtain DNA testing of the State's evidence. *See District Attorney's Office for Third Judicial District v. Osborne*, 557 U.S. 52, 67-74 (2009); *accord McKithen v. Brown*, 626 F.3d 143, 151 (2d Cir. 2010).

7. 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.

8. 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: The Supreme Court has held that "laws 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*, 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," among other things, "it invites the government to consider the particular reasons for a person's conduct by providing a mechanism for individualized exemptions." *Id.* "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.*; *see also Tandon v. Newsom*, 141 S. Ct. 1294 (2021) (stressing that any law that treats any comparable secular activity more favorably than religious exercise is not generally applicable and thus subject to strict scrutiny). When the government action is not neutral or not generally applicable, it triggers strict scrutiny under the Free Exercise Clause.

The federal Religious Freedom Restoration Act provides that, as to action by the federal government, strict scrutiny applies where action imposes a substantial burden on religion—even where the action is neutral or generally applicable. *See Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014). The Religious Land Use and Institutionalized Persons Act protects religious rights of people incarcerated or confined in states and provides protections relating to land use by religious organizations. *See Holt v. Hobbs*, 135 S. Ct. 133 (2015).

9. 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: In evaluating a claim that a state governmental action discriminates against a religious group or belief, courts apply strict scrutiny. *See, e.g.*, *Carson v. Makin*, 142 S.

Ct. 1987 (2022); *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1876-77 (2021); *Espinoza v. Montana Dep't of Revenue*, 140 S. Ct. 2246, 2260 (2020).

10. 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: Religious beliefs are protected under the Free Exercise Clause and Religious Freedom Restoration Act as long as they are sincerely held—i.e., reflect an honest conviction. *See Frazee v. Illinois Dep't of Emp. Sec*., 489 U.S. 829, 834 (1989). The beliefs do not need to be consistent with a particular faith tradition. *See id.* at 834 (1989) ("[W]e reject the notion that to claim the protection of the Free Exercise Clause, one must be responding to the commands of a particular religious organization."); *Burwell v. Hobby Lobby Stores, Inc*., 573 U.S. 682, 724 (2014) (stating that the court's role is limited to determining if a person's religious belief is an "honest conviction," not whether that belief is reasonable); *see also Ford v. McGinnis*, 352 F.3d 582, 590 (2d Cir. 2003) (reversing district court, holding that "[b]y looking behind [plaintiff's] sincerely held belief, the district court impermissibly confronted what is, in essence, the 'ecclesiastical question' of whether, under Islam, the postponed meal retained religious meaning").

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

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

Response: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court held that the Second Amendment confers an individual right to keep and bear arms. The Court held that the District of Columbia statutes at issue—which banned handgun possession in the home and prohibited people from rendering lawful firearms in their home operable for immediate self-defense—violated the Second Amendment.

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.

12. 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 understand Justice Holmes's statement to mean that judges should not decide cases based on their personal views. If confirmed, I would consider cases without regard to any personal views and apply binding precedent to the facts of each case.

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

Response: As a judicial nominee, I am generally precluded from commenting on the correctness of Supreme Court precedent because it is possible that related issues could come before the courts. I will note that the Supreme Court overruled *Lochner v. New York*, 198 U.S. 45 (1905) in *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937), and later observed that the "[t]he doctrine that prevailed in *Lochner* . . . and like cases—that due process authorizes courts to hold laws unconstitutional when they believe the legislature has acted unwisely—has long since been discarded." *Ferguson v. Skrupa*, 372 U.S. 726, 730 (1963). If confirmed, I would faithfully apply precedent of the Second Circuit and Supreme Court with respect to substantive due process issues.

13. In *Trump v. Hawaii*, the Supreme Court overruled *Korematsu v. United States*, 323 U.S. 214 (1944), saying that the decision—which had not been followed in over 50 years—had "been overruled in the court of history." 138 S. Ct. 2392, 2423 (2018). What is your understanding of that phrase?

Response: The Supreme Court said in *Trump v. Hawaii*, 138 S. Ct. 2392 (2018): "*Korematsu* was gravely wrong the day it was decided, has been overruled in the court of history, and—to be clear—'has no place in law under the Constitution.'" *Id*. at 2423 (citation omitted). It appears that the Supreme Court was using the phrase "court of history" to mean that although the case had not been formally overruled, it was widely viewed as discredited. *See, e.g.*, Adam Liptak, *A Discredited Supreme Court Ruling That Still, Technically, Stands*, N.Y. Times, Jan. 27, 2014, https://www.nytimes.com/2014/01/28/us/time-for-supreme-court-to-overrulekorematsu-verdict.html (quoting Justice Scalia as saying the decision was "among the court's most shameful blunders").

14. 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: I am unaware of any Supreme Court opinions that have not been formally overruled but are no longer good law. As a judicial nominee, I am generally precluded from commenting on whether any Supreme Court opinions are no longer good law if they have not been formally overruled. If confirmed, I would faithfully apply all binding decisions of the Supreme Court.

a. If so, what are they?

Response: Not applicable. Please see my response to Question 14.

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

Response: Yes. I commit to faithfully applying all binding Supreme Court precedents.

15. 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?

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

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 to all subparts: As the Supreme Court has explained, the prohibition against monopoly in Section 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." *United States v. Grinnell Corp*., 384 U.S. 563, 570-71 (1966). The Supreme Court concluded in *Eastman Kodak Company v. Image Technical Services., Inc*., 504 U.S. 451 (1992) that "evidence that [the defendant] controls nearly 100% of the parts market and 80% to 95% of the service market, with no readily available substitutes, is . . . sufficient" to establish monopoly power under Section 2 of the Sherman Act. *Id.* at 481. The Second Circuit has explained that "market share analysis, while essential, is not necessarily determinative in the calculation of monopoly power under" Section 2 and courts must also consider "[o]ther market characteristics," including "the strength of the competition, the probable development of the industry, the barriers to entry, the nature of the anticompetitive conduct and the elasticity of consumer demand." *International Distribution Centers, Inc. v. Walsh Trucking Co., Inc*., 812 F.2d 786, 792 (2d Cir. 1987). If I am confirmed and have a legal dispute regarding what constitutes a monopoly come before me, I would evaluate the arguments presented and faithfully apply binding precedent from the Supreme Court and Second Circuit.

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

Response: The Supreme Court held in *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938), that "[t]here is no federal general common law." *Id.* at 78; *see also Rodriguez v. Federal Deposit Insurance Corp*., 140 S. Ct. 713, 717 (2020) (emphasizing that "[j]udicial 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"). The Supreme Court has, however, recognized specific areas of federal common law. *See Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 426 (1964) (recognizing several "enclaves of federal judge-made law which bind the States"); *Collins v. Virginia*, 138 S. Ct. 1663, 1679-80 (2018) (listing areas of federal common law including, *inter alia*, admiralty, foreign affairs, and disputes between States) (Thomas, J., concurring).

17. 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: State courts generally have the authority to determine the scope of state constitutional provisions and a decision by a state's highest court on the scope of such a provision is binding on the federal courts. *See PruneYard Shopping Ctr. v. Robins*, 447 U.S. 74, 81 (1980); *Wainwright v. Goode*, 464 U.S. 78, 84 (1983). If confirmed, I would carefully consider the arguments of the parties, research the applicable law, and faithfully apply binding precedent should a case involving the scope of a state constitutional right come before me.

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

Response: Please see my response to Question 17. The Supreme Court said in *Wainwright v. Goode*, 464 U.S. 78, 84 (1983): "[T]he views of the state's highest court with respect to state law are binding on the federal courts." I am not aware of any Supreme Court or Second Circuit cases holding that a federal court must interpret identically state and federal constitutional provisions that use identical text.

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

Response: The Supreme Court has explained that state constitutional provisions can provide greater protections than the analogous federal constitutional provision. For example, in *Cooper v. State of California*, 386 U.S. 58 (1967), the Court recognized "the State's power to impose higher standards on searches and seizures than required by the Federal Constitution if it chooses to do so." *Id.* at 62; *see also PruneYard Shopping Ctr. v. Robins*, 447 U.S. 74, 81 (1980) (holding that the Court's First Amendment decision "does not *ex proprio vigore* limit the authority of the State to exercise its police power or its sovereign right to adopt in its own Constitution individual liberties more expansive than those conferred by the Federal Constitution").

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

Response: Yes. Because the issue of de jure racial segregation is unlikely to come before the courts again, Canon 3(A)(6) of the Code of Conduct for U.S. Judges permits me to share my view that *Brown* was correctly decided.

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

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

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

Response to all subparts: Federal courts are authorized to issue injunctions pursuant to Federal Rule of Civil Procedure 65. Generally, a party seeking a preliminary injunction must show "a likelihood of success on the merits, a likelihood of irreparable harm in the absence of preliminary relief, that the balance of equities tips in the party's favor, and that an injunction is in the public interest." *American Civil Liberties Union v. Clapper*, 804 F.3d 617, 622 (2d Cir. 2015). Injunctions are "a drastic and extraordinary remedy, which should not be granted as a matter of course." *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165 (2010). When an injunction is issued against the federal government that prohibits enforcement of a specific law, it can have nationwide effect. The Second Circuit has recognized that nationwide injunctions may be appropriate in the context of the Administrative Procedure Act in some circumstances such as "where only a single case challenges the action or where multiple courts have spoken unanimously on the issue." *New York v. United States Dep't of Homeland Sec*., 969 F.3d 42, 88 (2d Cir. 2020). However, the Second Circuit has cautioned against nationwide injunctions in instances such as where "numerous challenges to the same agency action are being litigated simultaneously in district and circuit courts across the country," observing that "it is not clear to us that, where contrary views could be or have been taken by courts of parallel or superior authority, entitled to determine the law within their own geographical jurisdictions, the court that imposes the most sweeping injunction should control the nationwide legal landscape." *Id.* (limiting national injunction imposed by district court to state within the Second Circuit). If confirmed as a district judge, I would follow all binding Supreme Court and Second Circuit precedent when addressing a case involving a potential nationwide injunction.

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

Response: Please see my response to Question 19.

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

Response: The Supreme Court has explained that the "federalist structure of joint sovereigns preserves to the people numerous advantages." *Gregory v. Ashcroft*, 501 U.S. 452, 458 (1991). In particular, "[i]t 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." *Id.*; *see also Bond v. United States*, 564 U.S. 211, 221 (2011) ("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.").

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

Response: Several abstention doctrines may apply when a case brought in federal court is connected to state court proceedings. Abstention is "the exception, not the rule." *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 82 (2013)).

Younger abstention provides that federal courts should abstain from interfering with certain categories of state proceedings. *Younger* abstention applies "only in three exceptional circumstances involving (1) ongoing state criminal prosecutions, (2) certain civil enforcement proceedings, and (3) civil proceedings involving certain orders uniquely in furtherance of the state courts' ability to perform their judicial functions." *Cavanaugh v. Geballe*, 28 F.4th 428, 432 (2d Cir. 2022) (internal quotation marks omitted) (citing *Sprint*, 571 U.S. at 77). Before invoking *Younger*, courts should consider whether "there is (1) an ongoing state judicial proceeding [that] (2) implicates important state interests and (3) provides an adequate opportunity to raise federal challenges." *Id.* (internal quotation marks omitted).

Pullman abstention applies when a case challenges the constitutionality of a state law and the state court has not had an opportunity to address the issue. In particular, *Pullman* applies when: "(1) an unclear state statute is at issue; (2) resolution of the federal constitutional issue depends on the interpretation of the state law; and (3) the law is susceptible to an interpretation by a state court that would avoid or modify the federal constitutional issue." *Hartford Courant Co. v. Pellegrino*, 380 F.3d 83, 100 (2d Cir. 2004) (internal quotation marks omitted).

Burford abstention provides that "[w]here 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." *New Orleans Pub. Serv., Inc. v. Council of City of New Orleans*, 491 U.S. 350, 361 (1989) (internal quotation marks omitted).

Under *Colorado River* abstention, a "court may abstain in order to conserve federal judicial resources only in 'exceptional circumstances,' where the resolution of existing concurrent state-court litigation could result in 'comprehensive disposition of litigation.'" *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 813, 817 (1976). In determining whether to abstain, courts should consider: "(1) whether the controversy involves a res over which one of the courts has assumed jurisdiction; (2) whether the federal forum is less inconvenient than the other for the parties; (3) whether staying or dismissing the federal action will avoid piecemeal litigation; (4) the order in which the actions were filed, and whether proceedings have advanced more in one forum than in the other; (5) whether federal law provides the rule of decision; and (6) whether the state procedures are adequate to protect the plaintiff's federal rights." *Mochary v. Bergstein*, 42 F.4th 80, 85 (2d Cir. 2022) (internal quotation marks omitted).

Finally, the *Rooker-Feldman* doctrine "prohibits federal courts from adjudicating cases brought by state-court losing parties challenging state-court judgments." *Reed v. Goertz*, 598 U.S. 230, 235 (2023). For the doctrine to apply, "four requirements must be met: (1) the federal-court plaintiff must have lost in state court; (2) the plaintiff must complain of injuries caused by a state-court judgment; (3) the plaintiff must invite district court review and rejection of that judgment; and (4) the state-court judgment must have been rendered before the district court proceedings commenced." *Edwards v. McMillen Cap., LLC*, 952 F.3d 32, 35 (2d Cir. 2020) (internal quotation marks omitted).

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

Response: The purpose of damages is typically to provide compensation for past harm. Injunctive relief seeks to stop certain actions or harm in the future. The Supreme Court has cautioned that injunctions are an "extraordinary remedy" appropriate only when legal remedies would be inadequate. *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982). Whether damages and/or injunctive relief is a proper remedy depends on the factual circumstances and the claims at issue in the case before the court.

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

Response: To be protected under substantive due process, rights must be "deeply rooted in this country'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, 720-21 (1997). The government may infringe on these fundamental rights only if the infringement is narrowly tailored to serve a compelling state interest.

25. 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 Supreme Court has stated that the Free Exercise Clause "protects not only the right to harbor religious beliefs inwardly and secretly" but also "the ability of those who hold religious beliefs of all kinds to live out their faiths in daily life through the performance of (or abstention from) physical acts." *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2421 (2022) (internal quotation marks omitted). "Respect for religious expressions is indispensable to life in a free and diverse Republic." *Id.* at 2432.

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

Response: Black's Law Dictionary defines "freedom of religion" as an individual's "right to adhere to any form of religion or none, to practice or abstain from practicing religious beliefs, and to be free from governmental interference with or promotion of religion." Black's Law Dictionary (11th ed. 2019). The term "worship" refers to a "form of religious devotion, ritual, or service showing reverence, [especially] for a divine being or supernatural power." *Id.* I would view free exercise of religion as broader than and encompassing freedom of worship. The Free Exercise Clause protects free exercise of religion and freedom of worship. *Kennedy v. Bremerton Sch. Dist*., 142 S. Ct. 2407, 2421 (2022).

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

Response: Please see my answer to Question 8 and 9.

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: Religious beliefs are protected under the Free Exercise Clause and Religious Freedom Restoration Act as long as they are sincerely held—i.e., reflect an honest conviction. *See Frazee v. Illinois Dep't of Emp. Sec*., 489 U.S. 829, 834 (1989). The beliefs do not need to be consistent with a particular faith tradition. *See id.* at 834 (1989) ("[W]e reject the notion that to claim the protection of the Free Exercise Clause, one must be responding to the commands of a particular religious organization."); *Burwell v. Hobby Lobby Stores, Inc*., 573 U.S. 682, 724 (2014) (stating that the court's role is limited to determining if a person's religious belief is an "honest conviction," not whether that belief is reasonable); *see also Ford v. McGinnis*, 352 F.3d 582, 590 (2d Cir. 2003) (reversing district court, holding that "[b]y looking behind [plaintiff's] sincerely held belief, the district court impermissibly confronted what is, in essence, the 'ecclesiastical

question' of whether, under Islam, the postponed meal retained religious meaning").

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: By its plain terms, 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(a)(1); *Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania*, 140 S. Ct. 2367, 2383 (2020) (observing that RFRA "specifies that it 'applies to all Federal law, and the implementation of that law, whether statutory or otherwise'"). RFRA restricts the federal government from substantially burdening a person's exercise of religion "even if the burden results from a rule of general applicability 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." *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 705 (2014). In *Burwell*, the Supreme Court held that the owner of a closely held corporation with religious objections to certain methods of contraception could not be required under the Affordable Care Act to provide insurance coverage for them to employees. *Id.*

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.

26. Under American law, a criminal defendant cannot be convicted unless found to be guilty "beyond a reasonable doubt." On a scale of 0% to 100%, what is your understanding of the confidence threshold necessary for you to say that you believe something "beyond a reasonable doubt." Please provide a numerical answer.

Response: The Second Circuit has held that it was not plain error to instruct a jury as follows to explain the concept of "reasonable doubt" as follows:

> Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt. If based upon your consideration of the evidence you are firmly convinced that the defendant is guilty of the crime charged,

> you must find him guilty. If, on the other hand, you think there is a real possibility that he is not guilty, you must give him the benefit of the doubt and find him not guilty.

United States v. Reese, 33 F.3d 166, 170 (2d Cir. 1994). Over the years, there has been extensive litigation regarding jury instructions that elaborate on the meaning of reasonable doubt. Some judges have cautioned against supplying numerical values in jury instructions. *See, e.g.*, *United States v. Hall*, 854 F.2d 1036, 1044-45 (7th Cir. 1988) (discouraging judges from using "numerical estimates of probability . . . in the setting of jury deliberations") (Posner, J., concurring). If confirmed, I would instruct juries in criminal cases in accordance with any applicable binding precedent.

27. The Supreme Court has held that a state prisoner may only show that a state decision applied federal law erroneously for the purposes of obtaining a writ of habeas corpus under 28 U.S.C. § 2254(d) if "there is no possibility fairminded jurists could disagree that the state court's decision conflicts with th[e Supreme] Court's precedents." *Harrington v. Richter*, 562 U.S. 86, 102 (2011).

a. Do you agree that if there is a circuit split on the underlying issue of federal law, that by definition "fairminded jurists could disagree that the state court's decision conflicts with the Supreme Court's precedents"?

b. In light of the importance of federalism, do you agree that if a state court has issued an opinion on the underlying question of federal law, that by definition "fairminded jurists could disagree that the state court's decision conflicts if the Supreme Court's precedents"?

c. If you disagree with either of these statements, please explain why and provide examples.

Response to all subparts: In applying *Harrington v. Richter*, the Second Circuit has emphasized that a habeas petitioner must show that the state court's ruling on the claim "was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." *Washington v. Griffin*, 876 F.3d 395, 403 (2d Cir. 2017) (internal quotation marks omitted); *accord Jordan v. Lamanna*, 33 F.4th 144, 151 (2d Cir. 2022) (citing *Harrington* and reversing habeas grant). As a judicial nominee, I am precluded from expressing a view on an issue that may come before me if I am confirmed. I would not want the litigants to think that I had prejudged the issue. *See* Code of Conduct for United States Judges, Canon 3(A)(6). If confirmed, I would faithfully apply all binding Supreme Court and Second Circuit precedent.

28. U.S. Courts of Appeals sometimes issue "unpublished" decisions and suggest that these decisions are not precedential. *Cf.* Rule 32.1 for the U.S. Court of Appeals for the Tenth Circuit.

a. Do you believe it is appropriate for courts to issue "unpublished" decisions?

b. If yes, please explain if and how you believe this practice is consistent with the rule of law.

c. If confirmed, would you treat unpublished decisions as precedential?

d. If not, how is this consistent with the rule of law?

e. If confirmed, would you consider unpublished decisions cited by litigants when hearing cases?

f. Would you take steps to discourage any litigants from citing unpublished opinions? *Cf.* Rule 32.1A for the U.S. Court of Appeals for the Eighth Circuit.

g. Would you prohibit litigants from citing unpublished opinions? *Cf.* Rule 32.1 for the U.S. Court of Appeals for the District of Columbia.

Response to all subparts: Federal Rule of Appellate Procedure 32.1(a) provides: "A court may not prohibit or restrict the citation of federal judicial opinions, orders, judgments, or other written dispositions that have been": (i) "designated as 'unpublished,' 'not for publication,' 'non-precedential,' 'not precedent,' or the like"; and (ii) "issued on or after January 1, 2007." Second Circuit Rule 32.1.1 provides that "[r]ulings by summary order do not have precedential effect." If confirmed, I would treat all orders and opinions as set forth in the relevant rules and in Second Circuit and Supreme Court precedent.

29. In your legal career:

a. How many cases have you tried as first chair?

Response: Three

b. How many have you tried as second chair?

Response: Five

c. How many depositions have you taken?

Response: I cannot recall the precise number but I estimate more than a dozen.

d. How many depositions have you defended?

Response: I cannot recall the precise number but I estimate more than eight.

e. How many cases have you argued before a federal appellate court?

Response: I have presented oral argument in one case before a federal appellate court. I have filed briefs as sole counsel or co-counsel in approximately eight federal appellate cases.

f. How many cases have you argued before a state appellate court?

Response: I have not presented oral argument in a state appellate court. I have filed amicus briefs in state appellate courts and have argued appeals in Connecticut Superior Court from decisions of family support magistrates.

g. How many times have you appeared before a federal agency, and in what capacity?

Response: The only federal agency that I recall appearing before is the U.S. Department of Veterans Affairs. I believe I appeared before this agency several times in connection with benefits issues.

h. How many dispositive motions have you argued before trial courts?

Response: I cannot remember with precision how many dispositive motions I have argued but I would estimate several dozen.

i. How many evidentiary motions have you argued before trial courts?

Response: I cannot remember with precision how many evidentiary motions I have argued but there have been many. As an Assistant Federal Defender, I regularly appeared in federal court each week and handled bail hearings, suppression hearings, motions in limine, *Daubert* hearings, sentencing hearings, and probation and supervised release revocation hearings. Throughout the years, in representing clients through Quinnipiac's legal clinic, I have argued many evidentiary motions in civil cases in federal court as well as in civil and family law cases in state court.

30. If any of your previous jobs required you to track billable hours:

a. What is the maximum number of hours that you billed in a single year?

b. What portion of these were dedicated to pro bono work?

Response: I have not been required to track billable hours in my jobs.

31. 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 understand this statement to mean that a judge's job is to fairly and impartially apply the law to the facts without regard to the judge's personal opinions or views. A judge should decide the case based on binding law and the facts of the case—not based on whether the judge likes the result. If confirmed, I would faithfully apply binding precedent of the Second Circuit and Supreme Court and put aside any personal views.

32. Chief Justice Roberts said, "Judges are like umpires. Umpires don't make the rules, they apply them."

a. What do you understand this statement to mean?

Response: I understand this statement to mean that judges are not lawmakers. Instead, judges apply the law. Legislative bodies create laws.

b. Do you agree or disagree with this statement?

Response: I agree with the statement as I have described it.

33. When encouraged to "do justice," Justice Holmes is said to have replied, "That is not my job. It is my job to apply the law."

a. What do you think Justice Holmes meant by this?

Response: I think this statement means that the role of the judge is to faithfully apply the law to the facts of each case. A judge should not make decisions based on personal opinions, sympathy, or desired results. Instead, the decision must be based on controlling statutes and binding precedent. If confirmed, I would faithfully apply binding precedent of the Second Circuit and Supreme Court and put aside any personal views.

b. Do you agree or disagree with Justice Holmes? Please explain.

Yes. I agree the role of the judge is to impartially apply the law to the facts, regardless of any personal views about a desired result.

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

a. If yes, please provide appropriate citations.

Response: Yes, I have done so on some occasions and am listing here the instances where I recall taking such a position.

These materials discussed the impact of new U.S. Supreme Court decisions on state sentencing and parole statutes as applied to juvenile offenders and the need for some states to change laws to comply with the Supreme Court's holdings: *Procedures for Proportionate Sentences: The Next Wave of Eighth Amendment Noncapital Litigation*, 48 Conn. Law. Rev. 1121 (2016) (symposium, with Tracy Denholtz,); *Jury Sentencing and Juveniles: Eighth Amendment Limits and Sixth Amendment Rights*, 56 Boston College L. Rev. 553 (2015); *Review for Release: Juvenile Offenders, State Parole Practices, and the Eighth Amendment*, 89 Indiana L.J. (2014); Brief of amici curiae Juvenile Sentencing Project and other organizations filed in the Michigan Supreme Court in the case of *State v. Taylor*, No. 154994 (Feb. 2022); Brief of amici curiae Juvenile Sentencing Project and other organizations filed in the Michigan Supreme Court in the case of *State v. Poole*, No. 161529 (Jan. 2022); Brief of Law Professors as amici curiae filed in the Court of Appeals for Tennessee in the case of *Davis v. Tennessee Dept. of Corr.*, No. M2017-02301-COA-R3-CV (July 2018); Memorandum regarding Juvenile Sentencing Legislation (Dec. 2014); Lowenstein International Human

Rights Clinic at Yale Law School and Civil Justice Clinic at Quinnipiac University School of Law, Youth Matters: A Second Look for Connecticut's Children Serving Long Prison Sentences (2013); Civil Justice Clinic, Quinnipiac University School of Law, Juvenile Sentencing Fact Sheet (Apr. 2013); Civil Justice Clinic, Quinnipiac University School of Law, Juvenile Sentencing Fact Sheet (Nov. 2012). (These materials were supplied with my Senate Judiciary Questionnaire).

In addition, I believe that when I worked as an Assistant Federal Public Defender more than 15 years ago I may have challenged certain definitions contained in the Armed Career Criminal Act as unconstitutionally vague. I cannot recall this with certainty and have not been able to locate specific cases. However, I do recall that these arguments were being pursued by other federal defenders at the time and some of these arguments eventually prevailed in the U.S. Supreme Court. *See Johnson v. United States*, 576 U.S. 591 (2015).

35. 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.

36. What were the last three books you read?

Response: *Dear Life* (Alice Munro); *Demon Copperhead* (Barbara Kingsolver); *Life-Changing Magic of Tidying Up* (Marie Kondo).

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

Response: I think "systemic racism" means different things to different people and I do not have my own definition. Through my work as a lawyer, I have sought to support America's principle of equal justice under law by representing clients who cannot afford to hire counsel. As an academic, I have studied some demographic trends with respect to criminal sentencing, particularly with respect to juvenile offenders in Connecticut. Systemic issues—whether they exist and what to do about them—are questions for policymakers and academics. The role of a judge is to decide each case individually by applying the law impartially to the facts of the particular case. If confirmed, I would faithfully and impartially apply all precedent from the Supreme Court and Second Circuit in each individual case that came before me.

38. What case or legal representation are you most proud of?

Response: I am most proud of the day-to-day work I have done with students in Quinnipiac's Legal Clinic on behalf of clients who cannot afford lawyers. For example, over the years, we have helped indigent clients, including veterans, obtain suitable housing, secure occupational licenses, recover wages they were owed, adjust child

support payments, access necessary medical care, obtain damages for harm done, and obtain services and benefits to address their disabilities. These cases are not high-profile but they have been life-changing for our clients. I have found these experiences rewarding not just because we have helped clients in need but because my law students have learned to be ethical and competent lawyers through the process of helping others.

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

Response: Yes.

a. How did you handle the situation?

Response: I put aside my personal views and represent my client as required by the rules of professional conduct.

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

Response: Yes.

40. What three law professors' works do you read most often?

Response: I do not regularly read the works of any particular law professor. At Quinnipiac, faculty colleagues often given feedback to each other on their work. I try to stay abreast of the work of law professors around the country, particularly as relevant to my areas of scholarship.

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

Response: The Federalist Papers give great insight into the views of our Founders. I had the opportunity to study them in law school and return to them at times since then. Reading the Federalist Papers no doubt shaped my understanding of our country's history and its legal foundation. No one Federalist Paper in particular has most shaped my views.

42. What is a judicial opinion, law review article, or other legal opinion that made you change your mind?

Response: I cannot recall a particular opinion or article that changed my mind on an issue but I can say that I am a person who keeps an open mind and considers different views before making up my mind. One benefit of serving on a law faculty has been the opportunity to be involved in governance of the law school with a thoughtful and devoted group of colleagues. I certainly have had occasion to change my initial leanings after hearing from colleagues on issues.

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

Response: The Supreme Court returned the issue of abortion to the people and their elected representatives in *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022). In *Dobbs*, the Court stated that its "opinion [was] not based on any view about if and when prenatal life is entitled to any of the rights enjoyed after birth." *Id.* at 2261. As a district court nominee, I am precluded from expressing any personal views regarding issues that could come before me if I am confirmed. I would not want any litigants to think that I have prejudged an issue. *See* Code of Conduct for U.S. Judges, Canon 3(A)(6). If confirmed, I would fully and faithfully apply the *Dobbs* decision and any other binding Supreme Court or Second Circuit precedent.

44. 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: The only other time I recall testifying under oath was as an expert witness regarding standards of competence for criminal defense lawyers. The case was *Joseph v. United States*, 13-cv-168 (JCH) (D. Conn.).

45. 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)?
b. The Supreme Court's substantive due process precedents?
c. Systemic racism?
d. Critical race theory?

Response to all subparts: No.

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

a. Apple?
b. Amazon?
c. Google?
d. Facebook?
e. Twitter?

Response to all subparts: No.

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

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

Response: Throughout my nearly 20 years of practice, I have frequently reviewed briefs of colleagues and made editorial suggestions. It was common practice at the federal defenders to review each other's briefs and this practice has continued in my work since as a clinical law professor. My name has not been on all the briefs

for which I have offered edits. I have not kept track over the years of the many briefs for which I have provided comments and suggested edits.

48. Have you ever confessed error to a court?

a. If so, please describe the circumstances.

Response: I do not recall ever confessing error to a court.

49. 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: Judicial nominees are expected to answer all questions truthfully and to the best of their ability.

Questions from Senator Thom Tillis
for Sarah French Russell, nominee to be United States District Judge for the District of Connecticut

1. **Can a judge's personal views and background benefit them in interpreting and applying the law, or would you say that they are irrelevant?**

   Response: A judge's personal views and background are irrelevant to interpretations of the law and application of law to facts. A judge should faithfully apply the law without regard to any personal opinions or beliefs.

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

   Response: Impartiality is an expectation for a judge. Judges should recuse themselves from cases where their impartiality could be reasonably questioned. Canon 2A of the Code of Conduct for U.S. Judges explains that judges "should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

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

   Response: "Judicial activism" is defined by Black's Law Dictionary as "[a] philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions, usu. with the suggestion that adherents of this philosophy tend to find constitutional violations and are willing to ignore governing texts and precedents." Black's Law Dictionary (11th ed. 2019). If confirmed, I would closely follow governing text and binding precedent and set aside any personal views.

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: Faithful interpretation of the law may result in an outcome that some consider undesirable. Often, a litigant who has appeared before the court will view the court's decision in the case as undesirable. The court's job is to approach the case impartially and with an open mind, faithfully applying the law to the facts.

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

   Response: If confirmed, I would faithfully apply binding precedent of the Second Circuit and the Supreme Court with respect to the Second Amendment, including *District of Columbia v.*

Heller, 554 U.S. 570 (2008), *McDonald v. City of Chicago*, 561 U.S. 742 (2010), and *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022).

7. 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: If confirmed, I would faithfully apply binding Supreme Court and Second Circuit precedent to any qualified immunity issue presented to me. Under that precedent, a court must grant qualified immunity to law enforcement personnel and departments when either (1) the plaintiff fails to adduce facts sufficient to make out a constitutional or statutory violation, or (2) the alleged unconstitutionality of the officers' conduct was not clearly established at the time of the conduct at issue. "To be clearly established, a right must be sufficiently clear that every reasonable official would have understood that what he is doing violates that right." *Taylor v. Barkes*, 575 U.S. 822, 825 (2015) (internal quotation marks omitted). The Supreme Court has held that a court need not resolve whether the plaintiff's allegations make out a violation before concluding that any such violation would not have been clearly established at the time of the alleged misconduct. *Pearson v. Callahan*, 129 S. Ct. 808 (2009).

8. 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 judicial nominee, I am precluded from expressing a view on an issue that may come before me if I am confirmed. I would not want the litigants to think that I had prejudged the issue. *See* Code of Conduct for United States Judges, Canon 3(A)(6). If confirmed, I would faithfully apply all binding Supreme Court and Second Circuit precedent.

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

Response: As a judicial nominee, I am precluded from expressing a view on an issue that may come before me if I am confirmed. I would not want the litigants to think that I had prejudged the issue. *See* Code of Conduct for United States Judges, Canon 3(A)(6). If confirmed, I would faithfully apply all binding Supreme Court and Second Circuit precedent.

10. What are your thoughts regarding the importance of ensuring that all IP rights are in fact enforced?

Response: Congress has the power under the Intellectual Property Clause, contained in Article I of the Constitution, to grant "authors and inventors the exclusive right to their respective writings and discoveries" for a limited time. U.S. Const. art. I, § 8. If confirmed, I would faithfully apply relevant statutes and binding cases from the Supreme Court, Second Circuit, and Federal Circuit on intellectual property issues in cases that came before me.

11. In the context of patent litigation, in some judicial districts plaintiffs are allowed to request that their case be heard within a particular division. When the requested division has only one judge, this allows plaintiffs to effectively select the judge who will hear their case. What are your thoughts on this practice, which typically is referred to as "forum shopping" and/or "judge shopping?"

Response: The Supreme Court has expressed that "forum shopping" is disfavored. *See, e.g.*, *Alt. Marine Const. Co v. U.S. Dist. Ct. for W. Dist. of Texas*, 571 U.S. 49, 65 (2013). Forum shopping and/or judge shopping undermines the trust and confidence in the judicial system. I understand that in the United States Court for the District of Connecticut, the court for which I am nominated, cases are assigned randomly.

12. 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 shambles. What are your thoughts regarding the Supreme Court's patent eligibility jurisprudence?

Response: As a judicial nominee, I am precluded from expressing a view on an issue that may come before me if I am confirmed, such as patent eligibility jurisprudence. I would not want the litigants to think that I had prejudged the issue. *See* Code of Conduct for United States Judges, Canon 3(A)(6). If confirmed, I would faithfully apply all binding Supreme Court and Second Circuit precedent.