Senator Lindsey Graham, Ranking Member
Questions for the Record
Judge Amy M. Baggio
Nominee to be United States District Judge for the District of Oregon

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: While I do not know the context of this quotation, it suggests an approach to constitutional interpretation in which a judge's desired ends drive the analysis. This is not an appropriate analytical approach because the judge's job is to discern what the drafters intended in the provision. A judge's independent value judgments are not relevant to that analysis.

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: No.

3. **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 disqualifying 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. When hiring a clerk, I would not select any person who has publicly endorsed the views of an organization designated a Foreign Terrorist Organization by the U.S. Department of State.

4. **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: Yes.

5. **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 person who is in custody pursuant to a sentence imposed in federal court may seek collateral review of the conviction and sentence by filing a petition pursuant to section 2255 of title 28 of the United States Code that seeks to vacate, set aside, or correct the underlying sentence. Section 2255 petitions are subject to strict procedural requirements, including a one-year statute of limitations. 28 U.S.C. § 2255(f). In order to obtain relief, the petitioner must establish that they are being held contrary to the Constitution or laws of the United States, that the court was without jurisdiction to impose such sentence, that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack. 28 U.S.C. § 2255(a).

   A person who is in custody pursuant to a sentence imposed in state court may seek collateral review of the conviction and sentence by filing a petition pursuant 28 U.S.C. § 2254. An application for a writ of habeas corpus for a person in state custody "pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim--(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d). State prisoners' petitions for habeas corpus relief are also subject to strict procedural requirements, including exhaustion of state court remedies and a one-year statute of limitations. 28 U.S.C. §§ 2254, 2244(d).

6. **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* and *Students for Fair Admissions v. President & Fellows of Harvard College*, 600 U.S. 181, 143 S. Ct. 2141 (2023), the Court held that the universities' affirmative action programs violated the Equal Protection Clause of the Constitution because they discriminated on the basis of race and failed to survive a strict scrutiny review. Specifically, the programs used race as a negative, they employed improper racial stereotypes, and they failed to include a reasonable end date for the practice.

7. **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?**

   Response: Yes.

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

Response: I participated in hiring decisions while at the Office of the Federal Public Defender for the District of Oregon as well as at the Multnomah County Circuit Court.

8. **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. Hiring decisions by me or my input as to hiring decisions by others was driven by qualification for the position.

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

   Response: No; however, it was standard practice for certain of my employers to include a statement in employment announcements that persons from a variety of backgrounds were encouraged to apply.

10. **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: Not to my knowledge.

    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.

    Response: Not applicable.

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

    Response: Yes. *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 225, 143 S. Ct. 2141, 2173, 216 L. Ed. 2d 857 (2023); *Harrington v. Scribner*, 785 F.3d 1299, 1306 (9th Cir. 2015) ("Consequently, racial classifications in prisons are 'immediately suspect' and subject to strict scrutiny, which requires the government to prove that the measures are narrowly tailored to further a compelling

government interest." (quoting *Johnson v. California*, 543 U.S. 499, 509, 125 S. Ct. 1141, 1148 (2005)).

12. **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, 143 S. Ct. 2298 (2023), the Supreme Court held that application of a Colorado law requiring a website designer to create a webpage for a same-sex couple constituted compelled speech in violation of the First Amendment where the webpage design constituted expression and where the website designer was willing to provide her services to same-sex couples, but she was not willing to create work product that constituted expression contrary to her own, genuinely-held, religious views.

13. **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: The Supreme Court cited *Barnette* in *303 Creative LLC v. Elenis*, 600 U.S. 570, 143 S. Ct. 2298 (2023). If I were to be confirmed as a district court judge, I will faithfully apply all binding precedent of the Ninth Circuit and the Supreme Court, including *Barnette* and *303 Creative*.

14. **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: The first step under the First Amendment analysis is to consider the text of the law itself. If a law regulating expression is "content-based" then the law is subject to strict scrutiny. Even if a law is "content-neutral," it may nevertheless be subject to strict scrutiny if the law cannot be "'justified without reference to the content of the regulated speech,'" or "was adopted by the government 'because of disagreement with the message [the speech] conveys,'" *Reed v. Town of Gilbert, Ariz*., 576 U.S. 155, 164, 135 S. Ct. 2218, 2227 (2015) (quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 791, 109 S. Ct. 2746 (1989)).

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

Response: In *Counterman v. Colorado*, 600 U.S. 66, 74, 143 S. Ct. 2106, 2114 (2023), the Supreme Court addressed the "true threats" exception to the First Amendment's guarantee of freedom of expression. Reaffirming *Virginia v. Black*, 538 U.S. 343, 359, 123 S. Ct. 1536 (2003), the Court held: "True threats are 'serious expression[s]' conveying that a speaker means to 'commit an act of unlawful violence.'" 143 S. Ct. at 2114 (quoting *Black*, 538 U.S. at 359, 123 S. Ct. 1536). The Court went on to hold that in order to find an act of expression falls under the true threats exception to the First Amendment and therefore may be subject to a criminal penalty, the act of expression must not only constitute a threat objectively, but the government must also establish that the expression includes a subjective component such that the defendant subjectively understood the threatening nature of the statement. To avoid the possibility of chilling protected speech, the government must prove this subjective component to a recklessness standard. 143 S. Ct. at 2118-19.

16. **Under Supreme Court and Ninth 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: Black's Law Dictionary provides that a question of law is "1. An issue to be decided by the judge, concerning the application or interpretation of the law ... 2. A question that the law itself has authoritatively answered, so that the court may not answer it as a matter of discretion ... 3. An issue about what the law is on a particular point; an issue in which parties argue about, and the court must decide, what the true rule of law is. … 4. An issue that, although it may turn on a factual point, is reserved for the court and excluded from the jury; an issue that is exclusively within the province of the judge and not the jury." Black's Law Dictionary (11th ed. 2019). A question of fact is "1. An issue that has not been predetermined and authoritatively answered by the law. ... 2. An issue that does not involve what the law is on a given point. 3. A disputed issue to be resolved by the jury in a jury trial or by the judge in a bench trial. ... 4. An issue capable of being answered by way of demonstration, as opposed to a question of unverifiable opinion." *Id*. Whether an issue is one of fact or one of law depends on the applicable legal framework and evidence admitted in a given case. *See Pullman-Standard v. Swint*, 456 U.S. 273, 289, n. 19, 102 S. Ct. 1781 (1982); *Khan v. Holder*, 584 F.3d 773, 780 (9th Cir. 2009).

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

Response: Federal criminal sentencing occurs pursuant to 18 U.S.C. § 3553(a), which states that a sentencing court shall consider (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need for the sentence imposed to reflect the four primary purposes of sentencing, i.e., retribution, deterrence, incapacitation, and rehabilitation; (3) the kinds of sentences available (e.g., whether probation is prohibited or a mandatory minimum term of imprisonment is required by

statute); (4) the sentencing range established through application of the sentencing guidelines and the types of sentences available under the guidelines; (5) any relevant "policy statements" promulgated by the Commission; (6) the need to avoid unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar conduct; and (7) the need to provide restitution to any victims of the offense. The statutory framework does not direct a judge that any one of the purposes of sentencing is more important than another. Were I to be so fortunate as to be confirmed to serve as a district court judge, I would abide by the Supreme Court and Ninth Circuit law interpreting application of 18 U.S.C. § 3553(a).

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

    Response: Judges are bound to apply all relevant precedent from the Supreme Court. It would not be appropriate for me as a sitting state court judge nor as a nominee to the district court to articulate an opinion as to the quality of the reasoning of any particular Supreme Court decision. 28 U.S.C. § 455; Code of Conduct for United States Judges, Canon 3; ABA Model Code of Judicial Conduct, Canon 2.

19. **Please identify a Ninth Circuit judicial opinion from the last 50 years that you think is particularly well-reasoned and explain why.**

    Response: It would not be appropriate for me as a nominee to the district court bench to articulate an opinion as to the quality of any particular Ninth Circuit decision because all Ninth Circuit decisions apply equally and all Ninth Circuit precedent will bind my decisions should I be so fortunate to be confirmed to serve as a District of Oregon judge. 28 U.S.C. § 455; Code of Conduct for United States Judges, Canon 3; ABA Model Code of Judicial Conduct, Canon 2.

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

    Response: Title 18, section 1507 makes it a crime punishable for up to one year for a person who "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…." As such, the statute criminalizes picketing or parading under certain circumstances.

21. **Is 18 U.S.C. § 1507 constitutional?**

Response: I have located no precedent discussing the constitutionality of 18 U.S.C. § 1507; however, the Supreme Court did uphold the constitutionality of a state statute modeled after 18 U.S.C. § 1507 in *Cox v. Louisiana*, 379 U.S. 559, 85 S. Ct. 476 (1965). As a judicial nominee, it would otherwise be inappropriate for me to opine on the constitutionality of a federal statute. 28 U.S.C. § 455; Code of Conduct for United States Judges, Canon 3; ABA Model Code of Judicial Conduct, Canon 2. In addition, the cases and controversies clause of Article III prohibits a judge from issuing an advisory opinion.

22. **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: *Dobbs v. Jackson Women's Health Org*., 142 S. Ct. 2228, 2242 (2022), overruled *Roe* and *Casey*.

    Consistent with other judicial nominees' responses to Questions for the Record, I believe that the constitutionality of *de jure* segregation and laws prohibiting interracial marriage are sufficiently well-settled that I can state that *Brown* and *Loving* were correctly decided. For all remaining cases listed, 28 U.S.C. § 455, the Code of Conduct for United State Judges, and Canon 2 of the ABA Model Code of Judicial Conduct preclude me from stating whether I believe any of the other Supreme Court precedent listed above were correctly decided. I am committed to faithfully and objectively applying all Supreme Court and Ninth Circuit precedent without regard to any personal view I might have.

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

    Response: *New York State Rifle & Pistol Ass'n, v. Bruen*, 597 U.S. 1, 142 S. Ct. 2111 (2022), held that the Second Amendment creates an individual right to bear arms outside

the home for purposes of self-defense. If a regulation or statute was alleged to infringe on that fundamental right, per *Bruen*, a court is to consider whether the challenged restriction is consistent with our nation's historical foundations concerning the regulation of firearms.

24. **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: I previously spoke with Chris Kang who told me about the judicial nominations process at the time that he worked in the White House Counsel's Office.

25. **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 Demand Justice? If so, who?**

Response: No

26. **Arabella Advisors is a progressive organization founded "to provide strategic guidance for effective philanthropy" that has evolved into a "mission-driven, Certified B Corporation" to "increase their philanthropic impact."**
    a. **Has anyone associated with Arabella Advisors requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

       Response: No

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

       Response: No

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

       Response: No

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

       Response: No

27. **The Open Society Foundations is a progressive organization that "work[s] to build vibrant and inclusive democracies whose governments are accountable to their citizens."**
    a. **Has anyone associated with Open Society Fund requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

       Response: No

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

Response: No

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

Response: No

28. **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

29. **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 March 2023, United States Senators Ron Wyden and Jeff Merkley announced a timeline for nominations to fill the vacancy created by Chief Judge Marco Hernández's announcement that he would take senior status. The announcement directed interested parties to submit a number of materials to Senator Wyden's office, which I did on April 7, 2023. On May 13, 2023, I interviewed with a Judicial Selection Committee, which was made up of ten lawyers from throughout the state. The Judicial Selection Committee reported their recommendations to the Senators. On June 1, 2023, the Senators announced a list of six finalists for the district court position. I was one of those finalists. On June 14, 2023, I interviewed with attorneys from the White House Counsel's Office. I was contacted on September 14, 2023, by the White House Counsel's Office and informed that I was selected for additional vetting. Since September 15, 2023, I have been in contact with officials from the Office of Legal Policy at the

Department of Justice and the White House. On November 15, 2023, the President announced his intent to nominate me.

30. **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: As noted above in response to question 24.c, I previously spoke with Chris Kang who told me about the judicial nominations process at the time that he worked in the White House Counsel's Office.

31. **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: When the opening was first announced by my home state Senators, I inquired of the local Oregon chapter of the American Constitution Society regarding whether they planned to establish a formal review of applicants for Article III judgeships; however, I did not participate in any formal process or interview.

32. **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

33. **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

34. **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

35. **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: Prior to this process, I had never before completed a Senate Judiciary Questionnaire. Attorneys from Office of Legal Policy assisted me in understanding the nature of the questions and they recommended that I include cases that reflect the breadth and depth of my experience. All decisions as to which cases I included were my own.

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

Response: On June 14, 2023, I interviewed with attorneys from the White House Counsel's Office. I was contacted on September 14, 2023, by the White House Counsel's Office and informed that I was selected for additional vetting. Since September 15, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice and the White House.

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

Response: I received the Senate's Questions for the Record on December 20, 2023, and began drafting my responses the following day. I conducted my own research in order to answer your questions to the best of my ability. I received limited feedback from the Office of Legal Policy and finalized my answers.

Senator Hirono's Written Questions for Amy Baggio,
Nominee to be United States Court District Judge for the District of Oregon
December 13, 2023

1. **As part of my responsibility as a member of this Committee to ensure the fitness of nominees, I ask each nominee to answer two questions:**

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

      Response: No.

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

      Response: No.

Senator Mike Lee
Questions for the Record
Amy M. Baggio, Nominee for District Court Judge for the District of Oregon

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

Response: In my 4.5 years as a state court judge, I have developed an approach that I use in all matters assigned to me. At the outset, it is essential to approach every matter with an open mind so that I can perform my role as judge fairly and impartially. I first determine the applicable legal framework based on the nature of the parties' arguments, binding precedent as it relates to those arguments, and the tools of statutory and/or constitutional interpretation. Second, I consider the evidence in the record against that particular framework and make findings of fact as appropriate. Lastly, I endeavor to decide the matter expeditiously and in a way that sets forth my legal and factual conclusions in clear, concise terms. When possible, I reduce my decision to writing so that parties are more easily able to evaluate whether they wish to exercise their rights to appeal my decision. If I render my decision orally, I ask the parties if they understand what I have decided and why I have made my decision as I have.

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

Response: To decide a case that turned on the interpretation of a federal statute I would first determine if the Supreme Court or the Ninth Circuit had interpreted the statute. If so, that precedent would be binding on me and I would faithfully apply it to the case before me. If neither the Supreme Court not the Ninth Circuit has interpreted the statute, my approach to statutory construction starts with the text of the statute, defining any statutory terms based on the definitions in effect at the time of the drafting. If the text is not clear but there is controlling precedent that instructs as to the statutory meaning, then that precedent controls the outcome. If the text is ambiguous and there is no precedent to instruct as to proper interpretation, I would look to the context of the statutory framework, followed by persuasive precedent such as decisions of other circuits. I would also assess legislative history to the extent permitted by Supreme Court and Ninth Circuit precedent.

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

Response: Were I to be so fortunate as to be confirmed as a district court judge, I would first look to binding precedent on issues of constitutional interpretation. If the Supreme Court or Ninth Circuit has interpreted the provision or provided a framework for interpretation of the provision, that interpretation or framework is binding and I would apply it faithfully. If there is no such binding precedent, I would look to the text of the constitutional provision, applying definitions in effect at the time of the drafting. If the text of the constitutional provision is clear, that text controls the interpretation. If the text is ambiguous and there is no precedent to instruct as to proper interpretation, I would look to the context of the statutory framework, followed by persuasive precedent such as

decisions of other circuits. I would also assess legislative history to the extent permitted by Supreme Court and Ninth Circuit precedent.

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

Response: Please see my response to question 3, above.

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, above.

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: Please see my responses to questions 2 and 3, above. *See also D.C. v. Heller*, 554 U.S. 570, 625, 128 S. Ct. 2783, 2816 (2008).

7. **What are the constitutional requirements for standing?**

Response: "Article III of the Constitution confines the federal judicial power to 'Cases' and 'Controversies.' Under Article III, a case or controversy can exist only if a plaintiff has standing to sue—a bedrock constitutional requirement that this Court has applied to all manner of important disputes. … To establish standing, a plaintiff must show an injury in fact caused by the defendant and redressable by a court order." *United States v. Texas*, 599 U.S. 670, 675–76, 143 S. Ct. 1964, 1969–70 (2023).

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

Response: Congress's limited powers are enumerated in Article I, Section 8. "The powers of the legislature are defined and limited; and that those limits may not be mistaken, or forgotten, the constitution is written." *Marbury v. Madison*, 1 Cranch 137, 176, 2 L.Ed. 60 (1803). Congress has the authority to effectuate its powers with legislation. *See, e.g., McCulloch v. Maryland*, 17 U.S. 316, 4 L. Ed. 579 (1819) ("If the end be legitimate, and within the scope of the constitution, all the means which are appropriate, which are plainly adapted that end, and which are not prohibited, may constitutionally be employed to carry it into effect.").

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

Response: The Supreme Court has held: "[t]he question of the constitutionality of action taken by Congress does not depend on recitals of power which it undertakes to exercise."

Nat'l Federation of Independent Business v. Sebelius, 132 S. Ct. 2566, 2598 (2012). I would approach this type of legal question consistent with my response to question 2, above.

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

Response: The Due Process Clauses of the Fifth and Fourteenth Amendments are recognized as the sources of rights beyond those expressly delineated in the Constitution. Recently, the Supreme Court expressly held that the Due Process Clause of the Fourteenth Amendment "has been held to guarantee some rights that are not mentioned in the Constitution, but any such right must be 'deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty.' *Washington v. Glucksberg*, 521 U.S. 702, 721, 117 S. Ct. 2258, 138 L.Ed.2d 772 (1997) (internal quotation marks omitted)." *Dobbs v. Jackson Women's Health Org*., 597 U.S. 215, 231, 142 S. Ct. 2228, 2242 (2022). *Dobbs* provided examples of certain such rights not expressly enumerated in the Constitution, including but not limited to: the right to marry a person of a different race (*Loving v. Virginia*, 388 U.S. 1, 87 S. Ct. 1817 (1967)); the right to marry while in prison (*Turner v. Safley*, 482 U.S. 78, 107 S. Ct. 2254 (1987)); the right to reside with relatives (*Moore v. East Cleveland*, 431 U.S. 494, 97 S. Ct. 1932 (1977)); the right to make decisions about the education of one's children (*Pierce v. Society of Sisters*, 268 U.S. 510, 45 S. Ct. 571 (1925); *Meyer v. Nebraska*, 262 U.S. 390, 43 S. Ct. 625 (1923)); and the right not to be sterilized without consent (*Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535, 62 S. Ct. 1110 (1942)). *Dobbs*, 597 U.S. at 256–57, 142 S. Ct. at 2257–58 (2022).

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

Response: Fundamental rights are protected under substantive due process. Please see my response 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: Were I to be so fortunate as to be confirmed as a district court judge, I would apply Supreme Court and Ninth Circuit precedent in determining the existence of any asserted constitutional right, whether personal or economic in nature. I would also note that *Lochner v. New York*, 198 U.S. 45, 25 S. Ct. 539 (1905), was overruled by *West Coast Hotel v. Parrish*, 300 U.S. 379, 57 S. Ct. 578 (1937).

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

Response: As explained in *United States v. Lopez*, the Supreme Court has "identified

three broad categories of activity that Congress may regulate under its commerce power. … First, Congress may regulate the use of the channels of interstate commerce. … Second, Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities. … Finally, Congress' commerce authority includes the power to 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, 558–59, 115 S. Ct. 1624, 1629–30 (1995) (internal citations omitted). When a court considers the lawfulness of congressional action against a Commerce Clause challenge, the court considers whether the legislative act falls in one of these three categories.

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 observed that a suspect class is one "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." *Massachusetts Bd. of Ret. v. Murgia*, 427 U.S. 307, 313, 96 S. Ct. 2562, 2567 (1976) (quoting *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 28, 93 S. Ct. 1278 (1973)).

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

Response: The role of checks and balances and separation of powers are the essence of our tripartite system of government, ensuring each branch functions within its constitutionally prescribed limits. As stated by James Madison: "The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny." The Federalist, No. 47, pp. 373—374 (Hamilton ed. 1880).

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: The nature of the specific separation of powers framework would depend on the nature of the issue presented. *See, e.g., Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635-38, 72 S. Ct. 863, 871 (1952) (Jackson, J., concurring) (setting out three-prong test to consider whether President acted within constitutional limits of Article II). Indeed, some decisions by another branch are wholly unreviewable under Article III. *See Nixon v. United States*, 506 U.S. 224, 237-38, 113 S. Ct. 732, 740 (1993) (declining to review Senate's interpretation of word "try" in Impeachment Trial Clause). Were I to be so fortunate as to be confirmed as a district court judge, I would rely on Supreme Court and Ninth Circuit precedent to determine the merits of any claim that a branch of

government has overstepped its constitutionally permitted role so as to violate the separation of powers.

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

Response: Empathy has no place in terms of the nature of the arguments raised, the law applicable to a given case, nor the record developed by the parties. However, empathy is a useful skill in terms of the way that a judge communicates with counsel and parties in a given case.

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

Response: Both of these alternatives are in violation of the rule of law.

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: This question appears based on scholarly research with which I am unfamiliar. The question also seeks an opinion as to an overarching policy of judicial review, which is an area on which a judicial nominee is precluded from opining. Were I to be confirmed, my only role would be to determine the law based on the arguments raised by the parties and apply that law to the record before me. I would do so diligently, with an open mind, and always within the prescribed limits of Article III.

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

Response: Black's Law Dictionary defines "judicial review" as "1. A court's power to review the actions of other branches or levels of government.… 2. The constitutional doctrine providing for this power. 3. A court's review of a lower court's or an administrative body's factual or legal findings." Black's Law Dictionary (11th ed. 2019).

Black's Law Dictionary defines "judicial supremacy" as "The doctrine that interpretations of the Constitution by the federal judiciary in the exercise of judicial review, esp[ecially] U.S. Supreme Court interpretations, are binding on the coordinate branches of the federal government and the states. The doctrine usu[ally] applies to judicial determinations that some legislation or other action is unconstitutional. ..." Black's Law Dictionary (11th ed. 2019).

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: Many scholars have discussed and debated Abraham Lincoln's statements about the *Dred Scott* decision and the context of those statements in proper historical context. *See, e.g*., Rachel A. Shelden, "*I Shall Not Forget Or Entirely Forsake Politics On The Bench": Abraham Lincoln, Dred Scott, And The Political Culture Of The Judiciary In The 1850s*, 83 Md. L. Rev. 217 (2023); Michael Stokes Paulsen, *Lincoln and Judicial Authority*, 83 Notre Dame L. Rev. 1227, 1301 (2008); Louise Weinberg, *Dred Scott and the Crisis of 1860*, 82 Chi. Kent L. Rev. 97, 121 (2007). The Supreme Court in *Cooper v. Aaron* noted that Chief Justice Marshall's decision in *Marbury v. Madison* "declared the basic principle that the federal judiciary is supreme in the exposition of the law of the Constitution, and that principle has ever since been respected by this Court and the Country as a permanent and indispensable feature of our constitutional system. *Cooper v. Aaron*, 358 U.S. 1, 18, 78 S. Ct. 1401, 1409–10 (1958). While elected officials enjoy the right to vigorously disagree with decisions of the Supreme Court and to voice their disagreement as political speech protected by the First Amendment, when officials take an oath to uphold and defend the Constitution, they agree to the most foundational premise in existence since Chief Justice Marshall's decision in *Marbury* 220 years ago that it is the federal judiciary that is the ultimate arbiter of constitutional interpretation.

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: An Article III judge is bound to act within the confines of the role, which is to fairly and diligently render decisions on what the law is based on the arguments raised by the parties and the record before the court. That judicial role never involves creating law or enforcing law. Those tasks are left to the legislative and executive branches. Only by remaining faithful to each branch's role can the government serve the people as guaranteed by our Constitution.

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: Just this term the Supreme Court stated: "As this Court has explained: 'If a precedent of this Court has direct application in a case,' … a lower court 'should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions.' *Rodriguez de Quijas v. Shearson/American Express, Inc*., 490 U.S. 477, 484, 109 S. Ct. 1917, 104 L.Ed.2d 526 (1989). This is true even if the lower court thinks the precedent is in tension with 'some other line of decisions.'" *Mallory v. Norfolk S. Ry. Co*., 600 U.S. 122, 136, 143 S. Ct. 2028, 2038 (2023). Accordingly, even if the constitutional underpinnings of the precedent have become "questionable" as stated in this question, a lower court must apply a precedent that has direct application in a given case. If I were to be confirmed as a district court judge, I would apply this rule as to both Supreme Court and Ninth Circuit precedent.

24. **While serving as a member of the Chief Justice's Criminal Justice Advisory Committee this year, you approved the Charter on June 6th. Part of the Charter calls for the use of an "equity lens" to ensure there are not "disparate impacts on Black, Indigenous, and other people of color." 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: I was not present for the June 2023 Criminal Justice Advisory Committee (CJAC) meeting due to a family emergency. The language referenced above, however, was in the original CJAC Charter dated August 2020, which was in effect before I joined the CJAC in January of 2023.

As to the merits of your question, the CJAC purpose is not a legislative one; the CJAC advises the Chief Justice "on changes to court roles, policies, processes, services, or other areas in response to current and future issues in the state criminal justice system for the purpose of improving the administration of justice and ensuring access to justice for all." CJAC Charter, Article I. This work is separate from Oregon judges' sworn duty to apply all laws, including sentencing laws, as passed by the legislature. Under Oregon law, unlike federal law, the sentencing guidelines are mandatory. Or. Rev. Stat. § 137.699.

An individual defendant's group identity plays no role in a judge's sentencing analysis. Federal criminal sentencing occurs pursuant to 18 U.S.C. § 3553(a), which states that a sentencing court "shall consider" seven different factors: (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need for the sentence imposed to reflect the four primary purposes of sentencing (retribution, deterrence, incapacitation, and rehabilitation); (3) the kinds of sentences available (e.g., whether probation is prohibited or a mandatory minimum term of imprisonment is required by statute); (4) the advisory sentencing guideline range; (5) any relevant "policy statements" promulgated by the United States Sentencing Commission; (6) the need to avoid unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar conduct; and (7) the need to provide restitution to any victims of the offense. Were I to be so fortunate as to be confirmed to serve as a federal

judge, I would faithfully and impartially apply 18 U.S.C. § 3553(a) as well as Supreme Court and Ninth Circuit precedent regarding federal sentencing proceedings.

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: Black's Law Dictionary (11th ed. 2019) defines "equity" as "fairness; impartiality; evenhanded dealing." Any more specific definition or application of this term in any particular legal context is within the province of elected officials.

26. **Without citing Black's Law Dictionary, do you believe there is a difference between "equity" and "equality?" If so, what is it?**

Response: According to one of the definitions in the Merriam-Webster dictionary, the term "equity" means "justice according to natural law or right; specifically: freedom from bias or favoritism." Merriam-Webster defines "equality" as "the quality or state of being equal." Were I to be confirmed to serve as a federal judge, I would faithfully and impartially interpret any such terms consistent with the text and intent of the drafters based on the particular law or regulation at issue in a given case.

27. **Does the 14th Amendment's equal protection clause guarantee "equity" as defined by the Biden Administration (listed above in question 25)?**

Response: Please see my responses to questions 25 and 26.

28. **Without citing Black's Law Dictionary, how do you define "systemic racism?"**

Response: Merriam-Webster defines "systemic racism" as "the oppression of a racial group to the advantage of another as perpetuated by inequity within interconnected systems (such as political, economic, and social systems)."

29. **Without citing Black's Law Dictionary, how do you define "critical race theory?"**

Response: Merriam-Webster defines "critical race theory" as "a group of concepts (such as the idea that race … is a sociological rather than biological designation, and that racism … pervades society and is fostered and perpetuated by the legal system) used for examining the relationship between race and the laws and legal institutions of a country and especially the United States."

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 presided over *State of Oregon v. Hill*, wherein you suppressed three separate confessions of an admitted child abuser. Setting aside the validity of the first two confessions, you threw out the third confession because the officers' actions were "insufficient to purge the taint of the prior illegality." Police investigators have a duty to inform a defendant of their rights before custodial interrogations, which is exactly what the officers did in *Hill* on multiple occasions. What is required of police investigators so that the confessions they extract may be admissible at trial? What could the Hill officers have done differently to comply with constitutional requirements?**

Response: The decision in *Hill* analyzed under the Fifth Amendment and its Oregon corollary the lawfulness of the officers' interrogations of a 19-year-old defendant. During the course of Mirandizing the Defendant a third time, the same officers invoked the Defendant's prior waiver that I had previously found unconstitutional. For example, the officer said to the Defendant: "Miranda right here, you've signed that, you've read that. Yesterday, um, we do this every time we talk to somebody, if you can just read that out loud for us um, and then sign the bottom like you did yesterday." Opinion at 23. Because the same officers anchored the third advice of rights to the prior unconstitutional waivers, this meant that the third interrogation did not purge the taint of the prior illegality and was instead derivative of the earlier, unconstitutional interrogation. Suppression was therefore required. *State v. Powell*, 352 Or. 210, 227-28, 282 P.3d 845 (2012). There was no higher court review of the decision because the *Hill* case resolved with a guilty plea.

Senator John Kennedy
Questions for the Record

Amy M. Baggio

1. **Are there any circumstances under which it is justifiable to sentence a criminal defendant to death? Please explain.**

   Response: Whether an offense is punishable by death and the procedures for imposition of the death penalty are decisions made by the legislative branch. 18 U.S.C. §§ 3591-93. Were I to be so fortunate as to be confirmed as a district court judge, I would faithfully and impartially apply all applicable laws, including those related to the death penalty.

   a. **Should a judge's opinions on the morality of the death penalty factor into the judge's decision to sentence a criminal defendant to death in accordance with the laws prescribed by Congress and the Eighth Amendment?**

      Response: No

2. **Is the U.S. Supreme Court a legitimate institution?**

   Response: Yes

3. **Is the current composition of the U.S. Supreme Court legitimate?**

   Response: Yes

4. **Please describe your judicial philosophy. Be as specific as possible.**

   Response: In my 4.5 years as a state court judge, I have developed an approach that I use in all matters assigned to me. At the outset, it is essential to approach every matter with an open mind so that I can perform my role as judge fairly and impartially. I first determine the applicable legal framework based on the nature of the parties' arguments, binding precedent as it relates to those arguments, and the tools of statutory and/or constitutional interpretation. Second, I consider the evidence in the record against that particular framework and make findings of fact as appropriate. Lastly, I endeavor to decide the matter expeditiously and in a way that sets forth my legal and factual conclusions in clear, concise terms. When possible, I reduce my decision to writing so that parties are more easily able to evaluate whether they wish to exercise their rights to appeal my decision. If I render my decision orally, I ask the parties if they understand what I have decided and why I have made my decision as I have.

5. **Is originalism a legitimate method of constitutional interpretation?**

Response: Yes. *Kennedy v. Bremerton Sch. Dist*., 597 U.S. __, 142 S. Ct. 2407, 2428 (2022); *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 142 S. Ct. 2111 (2022); *D.C. v. Heller*, 554 U.S. 570, 595, 128 S. Ct. 2783, 2799 (2008).

6. **If called on to resolve a constitutional question of first impression with no applicable precedents from either the U.S. Supreme Court or the U.S. Courts of Appeals, to what sources of law would you look for guidance?**

   Response: I would first look to the text of the Constitution, defining terms as they were understood at the time of the drafting. If the textual meaning is plain, then the analysis ends with the text. If there remains uncertainty, I would look to the context of the constitutional provision and any Supreme Court or Ninth Circuit precedent that, while not binding precedent, may by analogy provide me guidance in interpreting the provision at issue. If the proper interpretation was still unclear, I would look to other canons of construction. Only if the text is unclear and there is no helpful non-binding precedent would I look legislative history to the extent permitted by the Supreme Court and Ninth Circuit precedent.

7. **Is textualism a legitimate method of statutory interpretation?**

   Response: Yes. *Bostock v. Clayton County*, 590 U.S. _, 140 S. Ct. 1731 (2020).

8. **When is it appropriate for a judge to look beyond textual sources when determining the meaning of a statute or provision?**

   Response: It is appropriate to look beyond the text only if, after interpreting the text using the definitions of the terms as understood at the time of the drafting, there remains some ambiguity as to the meaning of the statute or provision. *Patel v. Garland*, 596 U.S. 328, 346, 142 S. Ct. 1614, 1627 (2022) ("Yet we inevitably swerve out of our lane when we put policy considerations in the driver's seat. As we have emphasized many times before, policy concerns cannot trump the best interpretation of the statutory text."); *Milner v. Dep't. of Navy*, 562 U.S. 562, 574, 131 S. Ct. 1259, 1267 (2011) ("But the more fundamental point is what we said before: Legislative history, for those who take it into account, is meant to clear up ambiguity, not create it.").

9. **Does the meaning (rather than the applications) of the U.S. Constitution change over time? If yes, please explain the circumstances under which the U.S. Constitution's meaning changes over time and the relevant constitutional provisions.**

   Response: Several Supreme Court decisions regarding constitutional interpretation have focused on the meaning of the U.S. Constitution at the time of its drafting. *See e.g., New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 17, 142 S. Ct. 2111, 2126 (2022) (analyzing Second Amendment rights based on historical traditions); *Dobbs v.*

Jackson Women's Health Organization, 597 U.S. 215, 142 S. Ct. 2228 (2022) (analyzing right to abortion against historical framework illustrating of lack of such right); *Ramos v. Louisiana*, 590 U.S. __, 140 S. Ct. 1390, 1405 (2020) (analyzing Sixth Amendment's jury trial right based on historical traditions); *Timbs v. Indiana*, 586 U.S. __, 139 S. Ct. 682, 688 (2019) (analyzing Eighth Amendment Excessive Fines Clause prohibition based on historical traditions); *McDonald v. City of Chicago, Ill*., 561 U.S. 742, 767, 130 S. Ct. 3020, 3036 (2010) (analyzing Second Amendment's right to bear arms based on historical traditions); *D.C. v. Heller*, 554 U.S. 570, 595, 128 S. Ct. 2783, 2799 (2008) (analyzing Second Amendment right to bear arms based on historical traditions); *Crawford v. Washington*, 541 U.S. 36, 53, 124 S. Ct. 1354, 1365 (2004) (analyzing Sixth Amendment right to confront witnesses based on historical traditions).

10. Please summarize Part II(A) of the U.S. Supreme Court's decision in *Brown v. Davenport*, 596 U.S. 118 (2022).

Response: Part II(A) of *Brown v. Davenport*, 596 U.S. 118, 142 S. Ct. 1510 (2022), provided an historical background for the Court's decision that before a state prisoner could obtain federal habeas relief, the prisoner must satisfy both the *Brecht v. Abrahamson*'s "serious and injurious effect or influence on the verdict"-test (507 U.S. 619, 113 S. Ct. 1710 (1993)) *as well as* the high bar of the Antiterrorism and Effective Death Penalty Act, 28 U.S.C. § 2254(d). Specifically, Part II(A) set forth the Court's concern that federal courts were granting federal habeas relief to state prisoners more and more frequently, a practice that threatened the presumption of finality of state court convictions: "The traditional distinction between jurisdictional defects and mere errors in adjudication no longer restrained federal habeas courts. Full-blown constitutional error correction became the order of the day." *Brown*, 596 U.S. at 130, 142 S. Ct. at 1522. The Court noted that frequent granting of relief had the effect of trivializing the writ, resulted in "an exploding caseload of habeas petitions from state prisoners" and created the risk that meritorious cases could be lost like needles in a haystack. *Id*. at 130-131. It was within this context that the Court held that before relief could be granted, a state prisoner must prevail on under both *Brecht* and § 2254(d).

11. Please summarize Part IV of the U.S. Supreme Court's decision in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181 (2023).

Response: Part IV of *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181, 143 S. Ct. 2141 (2023), set forth the reasons why the affirmative action programs at Harvard and the University of North Carolina violated the Equal Protection Clause. Specifically, the Court held that the programs failed to survive strict scrutiny because they use race as both a negative and as an impermissible stereotype, and they have no end point.

12. Please summarize Part II of the U.S. Supreme Court's decision in *Whole Woman's Health v. Jackson*, 595 U.S. 30 (2021).

Response: Part II of *Whole Woman's Health v. Jackson*, 595 U.S. 30, 142 S. Ct. 542 (2021), addressed certain arguments pertaining to whether defendants' motions to dismiss should have been granted by the district court in connection to plaintiff abortion providers' pre-enforcement challenge to a Texas law that limited access to abortions and which delegated enforcement of that prohibition to members of the public. The Court dismissed the suits against the state trial judge and state trial court clerk because neither was an adverse litigant to the plaintiffs under Article III and therefore the suits were nonjusticiable. In addition, the Court held both the state court clerk and the state court judge were entitled to sovereign immunity. Part II also dismissed the suit against another defendant, Mr. Dickson, because the Court found plaintiffs lacked standing to sue him.

13. Please summarize Part II of the U.S. Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization* (2022).

Response: In Part II of *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215, 142 S. Ct. 2228 (2022), the majority analyzed whether the Fourteenth Amendment's guarantee of "liberty" included the right to an abortion as held in *Roe v. Wade*. Applying the *Washington v. Glucksberg* framework, the Court engaged in extensive findings regarding history and tradition as well as "the essential components of our Nation's concept of ordered liberty," and concluded: "When we engage in that inquiry in the present case, the clear answer is that the Fourteenth Amendment does not protect the right to an abortion." 597 U.S. at 240, 142 S. Ct. at 2248.

14. Please summarize Part III of the U.S. Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022).

Response: Part III of *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215, 142 S. Ct. 2228 (2022), set forth the analysis regarding the doctrine of stare decisis and considerations for when the Court may overturn its prior precedent. Applying five factors (nature of the error, quality of the reasoning, workability of the rule, effect on other areas of law, and reliance), the Court's majority concluded that *Roe v. Wade* and *Casey v. Planned Parenthood* must be overturned.

15. Please summarize Part III of the U.S. Supreme Court's decision in *West Virginia v. EPA*, 142 S. Ct. 2587 (2022).

Response: Part III of *West Virginia v. EPA*, 597 U.S. __, 142 S. Ct. 2587 (2022), described how courts are to interpret statutory language both in context and within a particular statutory framework. The Court discussed how, when an agency interprets a statute so as to result in an act that is extraordinarily broad, or if the agency's interpretation results in economic or political significance, then reviewing courts should

"hesitate before concluding that Congress meant to confer such authority." *West Virginia v. EPA*, 142 S. Ct. 2587, 2607–2608 (2022). This approach is known as the major questions doctrine. Applying the major questions doctrine, the Court concluded that the EPA exceeded its authority in its interpretation of Section 111(d) of the Clean Air Act.

16. Please describe the legal rule employed in *Rivas-Villegas v. Cortesluna*, 595 U.S. 1 (2021), and explain why the U.S. Supreme Court sided with the Petitioner.

Response: *Rivas-Villegas v. Cortesluna*, 595 U.S. 1, 142 S. Ct. 4 (2021) (*per curiam*), involved the doctrine of qualified immunity. The Supreme Court generally applies a two-part analysis to determine whether an official is entitled to qualified immunity: (1) whether the facts alleged by the plaintiff amount to a constitutional violation, and (2) if so, whether the constitutional right was clearly established at the time of the misconduct. *Pearson v. Callahan*, 555 U.S. 223, 236, 129 S. Ct. 808, 818 (2009) (holding the two-part test is "often beneficial"). The focus in *Rivas-Villegas* was whether the petitioner-officer's conduct violated a clearly established statutory or constitutional right. The Court explained: "A right is clearly established when it is 'sufficiently clear that every reasonable official would have understood that what he is doing violates that right.' Although 'this Court's case law does not require a case directly on point for a right to be clearly established, existing precedent must have placed the statutory or constitutional question beyond debate.' This inquiry 'must be undertaken in light of the specific context of the case, not as a broad general proposition.'" *Id*. at 5-6 (internal citations omitted). The Court went on to explain that particularly when the civil rights violation alleged involves an excessive force claim under the Fourth Amendment, the right alleged to have been clearly established must be specific and will depend on the underlying facts and circumstances of the particular case. *Id*.

Applying the rule to the facts of the case, the Court considered the officer's conduct, which was described as him having placed his knee on suspect's back for eight seconds or less in the area from where he and other officers were retrieving a knife from the suspect, and concluded that the conduct did not violate a clearly established right against excessive force. Therefore, the petitioner-officer was entitled to qualified immunity.

17. When is it appropriate for a district judge to issue a nationwide injunction? Please also explain the legal basis for issuing nationwide injunctions and the relevant factors a district judge should consider before issuing one.

Response: As a general matter, injunctions are an extraordinary remedy. *Nken v. Holder*, 556 U.S. 418, 428, 129 S. Ct. 1749 (2009). Nationwide injunctions are a form of equitable relief whereby a court orders a defendant (usually the government) to take an action/refrain from taking an action based on the facts in that case and when the result of that order is that the defendant's actions are implicated throughout the country. A federal court's power to issue a nationwide injunction is said to stem from its equitable power under Article III; however, the practice raises standing concerns because these court orders affect parties well beyond those involved in the case. *See Dep't. of Homeland Sec. v. New York*, 140 S. Ct. 599, 600 (2020) (Gorsuch, J., concurring) ("Whether framed as

injunctions of 'nationwide,' 'universal,' or 'cosmic' scope, these orders share the same basic flaw—they direct how the defendant must act toward persons who are not parties to the case."); *Trump v. Hawaii*, 585 U.S. __, 138 S. Ct. 2392, 2425 (2018) (Thomas, J., concurring) ("These [nationwide] injunctions are beginning to take a toll on the federal court system—preventing legal questions from percolating through the federal courts, encouraging forum shopping, and making every case a national emergency for the courts and for the Executive Branch.").

18. Is there ever a circumstance in which a district judge may seek to circumvent a published precedent of the U.S. Court of Appeals under which it sits or the U.S. Supreme Court?

Response: No.

19. If confirmed, please explain what role U.S. Supreme Court dicta would play in your decisions.

Response: Dictum is "[a] judicial comment made while delivering a judicial opinion, but one that is unnecessary to the decision in the case and therefore not precedential (although it may be considered persuasive)." Black's Law Dictionary (11th ed. 2019). Dicta is not binding. *Parents Involved in Community Schools v. Seattle School Dist. No. 1*, 551 U.S. 701, 737, 127 S. Ct. 2738, 2762 (2007); *Central Va. Community College v. Katz*, 546 U.S. 356, 363, 126 S. Ct. 990 (2006) ("we are not bound to follow our dicta in a prior case in which the point now at issue was not fully debated"); *Cohens v. Virginia*, 6 Wheat. 264, 399–400, 5 L.Ed. 257 (1821) (Marshall, C.J.) (dicta "may be respected, but ought not to control the judgment in a subsequent suit, when the very point is presented for decision"). If Supreme Court dicta existed on an issue that was otherwise completely undecided then I would consider that dicta if persuasive and helpful.

20. To the best of your recollection, please list up to 10 cases in which you served as lead counsel in a bench trial in federal district court or a case tried before a jury in federal district court.

Response: In my 4.5 years as a state court judge I have overseen hundreds of civil and criminal matters and I have presided over 42 jury trials in civil and criminal cases. Before joining the bench, in my approximately 18 years as a litigator in federal court, I represented hundreds of clients and litigated dispositive motions in many federal court matters. I served as lead counsel in *United States v. Chatman*, 07-cr-00178-RE (D. Or.), in which the Defendant exercised his Sixth Amendment right to proceed to trial by jury.

21. When reviewing applications from persons seeking to serve as a law clerk in your chambers, what role if any would the race and/or sex of the applicants play in your consideration?

Response: Neither race nor sex would play in my consideration unless the applicant had tied that, or any other, personal characteristic to some aspect of their individual character

as it relates to their suitability to serve as a law clerk. *See Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 230-31, 143 S. Ct. 2141, 2176, 216 L. Ed. 2d 857 (2023) ("A benefit to a student who overcame racial discrimination, for example, must be tied to that student's courage and determination. Or a benefit to a student whose heritage or culture motivated him or her to assume a leadership role or attain a particular goal must be tied to that student's unique ability to contribute to the university. In other words, the student must be treated based on his or her experiences as an individual—not on the basis of race.").

22. Please list all social-media accounts you have had during the past 10 years with Twitter/X, Facebook, Reddit, Instagram, Threads, TikTok, and LinkedIn and the approximate time periods during which you had the account. If the account has been deleted, please explain why and the approximate date of deletion.

Response: I had a Twitter/X account from approximately 2018 to 2023. I used this account to read posts but I did not use it to make posts. I deleted my account in 2023 when I did not wish to have the account even for purpose of reading other posts. I had a Facebook account from approximately 2015 to 2019, at which time I took action to delete the account because I no longer wished to have the account. I assumed the account was totally deleted until 2023 when I learned that the account had been deactivated but not fully deleted. I fully deleted the account at that time as it had been my intention to do so four years earlier. I currently have an Instagram account that I have had since 2019.

23. Why should Senator Kennedy support your nomination?

Response: I have eighteen years of federal criminal experience during which I worked on large, high-stakes cases, many of which involved large numbers of defendants and complex motion litigation. Subsequent to those years as a federal litigator, I have served for 4.5 years as a state court judge during which I have overseen hundreds of civil and criminal matters, including 42 jury trials in civil and criminal cases. My work on the bench documents my commitment to fairly and impartially applying the rule of law in all matters assigned to me. Senator Kennedy can vote for me knowing that fairness, impartiality, and intellectual honesty in applying the rule of law will continue to guide my decision making.

Questions from Senator Thom Tillis
for Amy M. Baggio nominee to be United States District Judge for the District of Oregon

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: While a judge's personal views and background may assist them in ensuring clear, empathetic communication of issues and decisions, those personal views and background have no place in interpreting or applying the law.

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

   Response: Impartiality is more than an expectation; impartiality is essential to the role.

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

   Response: Judicial activism is a "philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions, usu[ally] 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). Judicial activism is not appropriate.

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: In my time as a state court judge, I have abided by my oath to faithfully and impartially applied the law, regardless of the outcome. Desirability is a subjective concept that has no place when a judge is fulfilling his or her role to say what the law is. That said, when as a judge I perceive the disappointment of a party at the outcome of a case, I acknowledge that party's disappointment and make sure that although I have not ruled in their favor, they feel heard during the process and understand what I have ruled and why I have ruled that way.

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

   Response: As a state court judge, I have taken an oath to defend and uphold the Constitution, including the equal defense of each and every constitutional right. Were I to be so fortunate as to be confirmed as a federal district court judge, I will continue to do so, including faithful

application of the Supreme Court's decisions in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 142 S. Ct. 2111 (2022); *McDonald v. City of Chicago, Ill.*, 561 U.S. 742, 130 S. Ct. 3020 (2010); and *D.C. v. Heller*, 554 U.S. 570, 128 S. Ct. 2783 (2008).

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: "The doctrine of qualified immunity protects government officials 'from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.' *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S. Ct. 2727 (1982). Qualified immunity balances two important interests—the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably. The protection of qualified immunity applies regardless of whether the government official's error is 'a mistake of law, a mistake of fact, or a mistake based on mixed questions of law and fact.'" *Pearson v. Callahan*, 555 U.S. 223, 231, 129 S. Ct. 808, 815 (2009) (internal citations modified). The Supreme Court generally applies a two-part analysis to determine whether an official is entitled to qualified immunity: (1) whether the facts alleged by the plaintiff amount to a constitutional violation, and (2) if so, whether the constitutional right was clearly established at the time of the misconduct. *Pearson*, 555 U.S. at 236; 129 S. Ct. at 818.

   In *Rivas-Villegas v. Cortesluna*, 595 U.S. 1, 142 S. Ct. 4 (2021) (*per curiam*), the Court explained: "A right is clearly established when it is 'sufficiently clear that every reasonable official would have understood that what he is doing violates that right.' Although 'this Court's case law does not require a case directly on point for a right to be clearly established, existing precedent must have placed the statutory or constitutional question beyond debate.' This inquiry 'must be undertaken in light of the specific context of the case, not as a broad general proposition.'" *Id*. at 5-6 (internal citations omitted). The Court went on to explain that particularly when the civil rights violation alleged involves an excessive force claim under the Fourth Amendment, the right alleged to have been clearly established must be specific and will depend on the underlying facts and circumstances of the particular case. *Id*.

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: The *Rivas-Villegas* decision, referenced in question 7 above, spoke to the particular need for courts to require plaintiffs to establish a clearly established and specific right in the Fourth Amendment context where officers are required to make split second decisions to protect public safety. The Court explained: "'[S]pecificity is especially important in the Fourth Amendment context, where ... it is sometimes difficult for an officer to determine how the relevant legal doctrine, here excessive force, will apply to the factual

situation the officer confronts.' Whether an officer has used excessive force depends on 'the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.' *Graham v. Connor*, 490 U.S. 386, 396, 109 S. Ct. 1865 (1989); *see also Tennessee v. Garner*, 471 U.S. 1, 11, 105 S. Ct. 1694 (1985) ('Where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force')." *Rivas-Villegas*, 595 U.S. at 6, 142 S. Ct. at 8 (citations modified and omitted).

Were I to be so fortunate to be confirmed as a district court judge, I would faithfully apply all Supreme Court and Ninth Circuit precedent regarding qualified immunity for law enforcement officers.

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

Response: As a judicial nominee, the Code of Conduct for United States Judges precludes me from offering any belief that I might have as to the proper scope of qualified immunity protections for law enforcement. Were I to be so fortunate to be confirmed as a district court judge, I would faithfully and impartially interpret all laws passed by Congress and apply Supreme Court and Ninth Circuit precedent regarding qualified immunity for law enforcement officers and police departments.

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

Response: The Intellectual Property Clause empowers Congress to grant authors and inventors exclusive rights in their writings and discoveries. U.S. Const. art. I, § 8, cl. 8; *see also Golan v. Holder*, 565 U.S. 302, 325, 132 S. Ct. 888 (2012) ("the Clause 'empowers Congress to determine the intellectual property regimes that, overall, in that body's judgment, will serve the ends of the Clause.'") (internal citation omitted). In addition, the Commerce Clause empowers Congress to regulate interstate and foreign commerce. The law generally protects four types of IP rights: patents, copyrights, trademarks, and trade secrets. In our system of justice, all statutory and constitutional rights deserve protection consistent with the rule of law and were I to be confirmed, I would faithfully and impartially apply the law regarding intellectual property.

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: Jurisdiction and venue determine whether a suit is properly brought before a

particular court. Manipulation of the process in the form of "forum shopping" or "judge shopping" may raise concerns over impartiality and fairness of the judiciary. I have no knowledge of or experience with the practice raised in your question.

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, the Code of Conduct for United States Judges precludes me from offering any thoughts I might have on Supreme Court patent eligibility jurisprudence and it would also be inappropriate for me to opine on how Congress may act to address concerns about patent eligibility. Were I to be so fortunate as to be confirmed, I would be bound by both Ninth Circuit, the Federal Circuit, and Supreme Court precedent on patent eligibility and I promise to faithfully and impartially apply the law as passed by Congress and as interpreted by the Ninth Circuit, the Federal Circuit, and the Supreme Court.