Senator Lindsey Graham, Ranking Member
Questions for the Record
Judge Gretchen S. Lund
Nominee to be United States District Judge for the Northern District of Indiana

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

   Response: I disagree with that statement. A judge is obligated to faithfully, fully, and impartially apply the law to the facts of the case directly before the court. A judge's value judgment is not a basis to resolve constitutional questions. If confirmed, I would faithfully follow all binding Supreme Court and Seventh Circuit precedent without regard to my own independent value judgments.

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 that statement or the context in which it was made. As an Indiana trial court judge, I faithfully apply all Indiana Supreme Court and Indiana Court of Appeals precedent. If confirmed as a district court judge, I would faithfully apply all Supreme Court and Seventh Circuit precedent. To the extent the statement suggests it is appropriate for a judge not to follow mandatory precedents, I disagree with the statement.

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.

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 prisoner in custody under a sentence of a federal court may seek and receive relief from the sentence under the following federal statutes: a motion attacking the sentence (28 U.S.C. § 2255); a direct appeal of the district court judgment (28 U.S.C. § 1291); a petition for writ of habeas corpus (28 U.S.C. § 2241); and a compassionate release motion for modification of a term of imprisonment (18 U.S.C. § 3582(c)).

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: Petitioner Students for Fair Admissions (SFFA) sued Harvard College over its admissions process, alleging that the process violated Title VI of the Civil Rights Act of 1964 by discriminating against Asian American applicants. Similarly, SFFA sued the University of North Carolina over its admissions process, alleging that the process violated the Fourteenth Amendment by using race as a factor in admissions. Both *Harvard* and *North Carolina* were decided jointly with the Supreme Court ruling that race-based admissions adopted by both Harvard and North Carolina were unconstitutional under the Equal Protection Clause of the Fourteenth Amendment. *See Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.,* 600 U.S. 181 (2023).

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 in my role as Goshen City Court Judge and Judge of Elkhart Superior Court 4. As a former Director on the Goshen Health Systems Board, I participated in the hiring decision of the Goshen Health Systems Chief Executive Officer.

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.

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

   Response: No.

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: No.

    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.

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

    Response: Yes. *See Students for Fair Admissions,* 600 U.S. at 206; *Alexander v. Milwaukee*, 474 F.3d 437, 444-45 (7th Cir. 2007).

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

    Response: The Supreme Court held that a wedding website designer could not be compelled to create a work of art which goes against their values and which they would not produce for any client. To do so, would be a violation of the First Amendment free speech rights of the wedding website designer. *See 303 Creative LLC v. Elenis*, 600 U.S. 570 (2023).

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: *West Virginia State Bd. of Educ. v. Barnette,* 319 U.S. 624 (1943) is good law and binding precedent. *Barnette* was cited in *303 Creative,* 600 U.S. at 585.

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: A regulation of speech is facially content based under the First Amendment if it "target[s] speech based on its communicative content"—that is, if it "applies to particular speech because of the topic discussed or the idea or message expressed." *City of Austin v. Reagan Nat'l Advert. of Austin, LLC*, 596 U.S. 61, 69 (2022) (citing *Reed v. Town of Gilbert, Ariz*., 576 U.S. 155, 163 (2015)). My analysis would be informed by asking whether the law is content neutral on its face, which must be decided before turning to the law's justification or purpose. *Id.* at 165-166. If the regulation imposes content based restrictions, a strict scrutiny standard applies. *Id.* at 171.

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

Response: True threats are "serious expression[s]" conveying that a speaker means to "commit an act of unlawful violence." *Virginia* v. *Black*, 538 U.S. 343, 359 (2003). The existence of a threat depends not on "the mental state of the author," but on "what the statement conveys" to the person on the receiving end. *Counterman v. Colorado,* 600 U.S. 66, 74 (2023). In this context, a recklessness standard--*i.e.*, a showing that a person "consciously disregard[ed] a substantial [and unjustifiable] risk that [his] conduct will cause harm to another," is the appropriate *mens rea. Id.* at 79 (quoting *Voisine* v. *United States*, 579 U.S. 686, 691 (2016)).

16. **Under Supreme Court and Seventh 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: Facts are "questions of who did what, when or where, how or why." *U.S. Bank N.A. v. Vill. at Lakeridge*, *LLC.,* 583 U.S. 387, 394 (2018). Questions of law are "issue[s] to be decided by the judge, concerning the application or interpretation of the law." Black's Law Dictionary (11th ed. 2019).

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

Response: Under 18 U.S.C. § 3553(a), a judge must weigh seven factors to make a decision regarding individual sentencing that is "sufficient, but not greater than necessary" to achieve the four statutory purposes. 18 U.S.C. § 3553(a) does not state that one factor is more important than another. The Supreme Court has explained that "after giving both parties an opportunity to argue for whatever sentence they deem appropriate, the district judge should then consider all of the § 3553(a) factors to determine whether they support the sentence requested by a party." *Gall v. United* States, 552 U.S. 38, 49-50 (2007). If confirmed, I would faithfully follow 18 U.S.C. § 3553(a) and apply binding precedent from the Supreme Court and Seventh Circuit.

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

Response: As an Indiana trial court judge and nominee for the district court, the Canons of the Code of Conduct for United States Judges prohibit me from commenting on the quality of the reasoning of Supreme Court precedents. If confirmed, I would follow the binding precedent from the Supreme Court and Seventh Circuit.

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

Response: As an Indiana trial court judge and nominee for the district court, the Canons of the Code of Conduct for United States Judges prohibit me from commenting on the quality of the reasoning of Supreme Court precedents. If confirmed, I would follow the binding precedent from the Supreme Court and Seventh Circuit.

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

Response: 18 U.S.C. § 1507 prohibits conduct committed "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."

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

Response: I am unaware of any Supreme Court or Seventh Circuit precedent that has addressed the constitutionality of 18 U.S.C. § 1507. However, the Supreme Court upheld the constitutionality of a state law modeled after 18 U.S.C. § 1507. *See Cox v. Louisiana*,

379 U.S. 559 (1965). As an Indiana trial court judge and nominee for the district court, it would be improper for me to comment on an issue that could come before me.

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?**

    Response: Yes. The constitutionality of racial segregation in schools is not likely to come before the courts again. Therefore, I believe it is permissible as a judicial nominee to state my opinion that the case was correctly decided.

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

    Response: Yes. The constitutionality of interracial marriage is not likely to come before the courts again. Therefore, I believe it is permissible as a judicial nominee to state my opinion that the case was correctly decided.

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

    Response: As an Indiana trial court judge and nominee for the district court, the Canons of the Code of Conduct for United States Judges prohibit commenting on cases and matters that may come before me if confirmed. If confirmed, I would faithfully follow all binding precedents of the Supreme Court and Seventh Circuit.

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

    Response: The Supreme Court overruled *Roe v. Wade* in *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022). *Dobbs* is binding precedent and I will apply it faithfully.

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

    Response: The United States Supreme Court overruled *Planned Parenthood v. Casey* in *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022). *Dobbs* is binding precedent and I will apply it faithfully.

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

    Response: As an Indiana trial court judge and nominee for the district court, the Canons of the Code of Conduct for United States Judges prohibit commenting on cases and matters that may come before me if confirmed. If confirmed, I would faithfully follow all binding precedents of the Supreme Court and Seventh Circuit.

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

Response: As an Indiana trial court judge and nominee for the district court, the Canons of the Code of Conduct for United States Judges prohibit commenting on cases and matters that may come before me if confirmed. If confirmed, I would faithfully follow all binding precedents of the Supreme Court and Seventh Circuit.

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

Response: As an Indiana trial court judge and nominee for the district court, the Canons of the Code of Conduct for United States Judges prohibit commenting on cases and matters that may come before me if confirmed. If confirmed, I would faithfully follow all binding precedents of the Supreme Court and Seventh Circuit.

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

Response: As an Indiana trial court judge and nominee for the district court, the Canons of the Code of Conduct for United States Judges prohibit commenting on cases and matters that may come before me if confirmed. If confirmed, I would faithfully follow all binding precedents of the Supreme Court and Seventh Circuit.

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

Response: As an Indiana trial court judge and nominee for the district court, the Canons of the Code of Conduct for United States Judges prohibit commenting on cases and matters that may come before me if confirmed. If confirmed, I would faithfully follow all binding precedents of the Supreme Court and Seventh Circuit.

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

Response: As an Indiana trial court judge and nominee for the district court, the Canons of the Code of Conduct for United States Judges prohibit commenting on cases and matters that may come before me if confirmed. If confirmed, I would faithfully follow all binding precedents of the Supreme Court and Seventh Circuit.

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?**

Response: As an Indiana trial court judge and nominee for the district court, the Canons of the Code of Conduct for United States Judges prohibit commenting on cases and matters that may come before me if confirmed. If confirmed, I would faithfully follow all binding precedents of the Supreme Court and Seventh Circuit.

m. **Was *303 Creative LLC v. Elenis* correctly decided?**

Response: As an Indiana trial court judge and nominee for the district court, the Canons of the Code of Conduct for United States Judges prohibit commenting on cases and matters that may come before me if confirmed. If confirmed, I would faithfully follow all binding precedents of the Supreme Court and Seventh Circuit.

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

Response: In *New York State Rifle & Pistol Ass'n. v. Bruen*, 597 U.S. 1 (2022), the Supreme Court held:

> "[W]hen the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.'"

Id. at 17; *See also District of Columbia v. Heller*, 554 U.S. 570 (2008); *McDonald v. City of Chicago*, 561 U.S. 742 (2010). If confirmed, I would faithfully apply the binding precedent of the Supreme Court and Seventh Circuit.

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

Response to all subparts: No.

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?**

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

Response to all subparts: 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?**
    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.**
    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.**
    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 to all subparts: 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?**
    b. **Are you currently in contact with anyone associated with the Open Society Foundations?**
    c. **Have you ever been in contact with anyone associated with the Open Society Foundations?**

    Response to all subparts: 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?**
b. **Are you currently in contact with anyone associated with Fix the Court? If so, who?**
c. **Have you ever been in contact with anyone associated with Fix the Court? If so, who?**

Response to all subparts: 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: On September 25, 2023, I spoke with staff from the office of Senator Todd Young concerning possible judicial selection. I met with staff from the offices of Senator Young and Mike Braun on September 28, 2023, and October 4, 2023. I was interviewed by attorneys from the White House Counsel's Office on October 6, 2023. Since that day, I have been in contact with the officials from the Office of Legal Policy at the Department of Justice. On November 15, 2023, the President announced his intent to nominate me and on November 27, 2023, my nomination was sent to the Senate.

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: No.

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: No.

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: No.

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

Response: See Response to Question 29.

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

Response: On December 20, 2023, I received questions from the Committee through the Department of Justice Office of Legal Policy. I reviewed the questions and my records, conducted legal research, and drafted my answers to the best of my ability. I shared my draft with OLP, which they provided feedback. I reviewed and considered the feedback received and submitted my answers to the Committee.

Senator Hirono's Written Questions for Gretchen Lund,
Nominee to be United States Court District Judge for the Northern District of Indiana
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
Gretchen S. Lund, Nominee for District Court Judge for the Northern District of Indiana

1. How would you describe your judicial philosophy?

Response: As an Indiana trial court judge, I follow Indiana Supreme Court and Indiana Court of Appeals precedent. If confirmed as a district court judge, I will follow Supreme Court and Seventh Circuit precedent. In doing so, I will follow the approach reflected in that precedent, and I will fully, fairly, and impartially, apply that precedent to the established facts of the case before me. Consistent with my practice in state court, I will treat all litigants and lawyers with respect and dignity.

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

Response: In deciding a case that turned on the interpretation of a federal statute, I would apply Supreme Court and Seventh Circuit precedent. If no such precedent exists, I would review the statutory text. If the text is clear, my analysis ends. *See Bostock v. Clayton Cnty., Ga.,* 140 S. Ct. 1731, 1749 (2020) ("This Court has explained many times over many years that, when the meaning of the statute's terms is plain, our job is at an end."). If the text were not clear, I would look to rules of statutory construction authorized by the Supreme Court and Seventh Circuit and I would consult any persuasive, non-binding authority from other circuit or district courts. Finally, to the extent authorized by the Supreme Court and Seventh Circuit, I would consult the legislative history of the statute. *Id.* at 1750.

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

Response: In deciding a case that turned on the interpretation of a constitutional provision, I would apply Supreme Court and Seventh Circuit precedent. If the interpretation question is one of first impression, I would look to the analysis methods set out in binding precedent of the Supreme Court and Seventh Circuit. In certain contexts, the Supreme Court has held that constitutional interpretation begins by applying the original public meaning of the text. *See District of Columbia v. Heller*, 554 U.S. 570, 605 (2008) ("address[ing] how the Second Amendment was interpreted from immediately after its ratification through the end of the 19th century.").

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

Response: The Supreme Court has held that the text and original meaning of a constitutional provision are important in interpreting the Constitution. *See Currier v. Virginia*, 138 S. Ct. 2144, 2153 (2018) (analyzing the Fifth Amendment and noting that "[t]his Court's contemporary double jeopardy cases confirm what the text and history suggest."); *See also Heller*, 554 U.S. 570, 576 (2008) (analyzing the Second

Amendment and quoting *United States v. Sprague*, 282 U.S. 716, 731 (1931) ("[t]he Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning.")). If confirmed, I would faithfully apply Supreme Court and Seventh Circuit precedent.

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.

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: In *Bostock*, the Supreme Court stated:

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

Bostock, 140 S. Ct. at 1738. If confirmed, I would faithfully follow Supreme Court and Seventh Circuit precedent in determining the plain meaning of a statute or constitutional provision.

7. What are the constitutional requirements for standing?

Response: Under Article III of the Constitution, a plaintiff needs a "personal stake" in the case. *See Biden v. Nebraska*, 143 S. Ct. 2355, 2365 (2023). That is, the plaintiff must have suffered "an injury in fact—a concrete and imminent harm to a legally protected interest, like property or money—that is fairly traceable to the challenged conduct and likely to be redressed by the lawsuit." *See Id.* (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561 (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 of the Constitution enumerates the powers of Congress. In *McCulloch v. Maryland*, 17 U.S. 316, 324 (1819), the Supreme Court held that the express grant of powers to Congress in the Constitution "necessarily implies the grant of all usual and suitable means for the execution of the powers

granted," and that "Congress is authorized to pass all laws 'necessary and proper' to carry into execution the powers conferred on it."

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 *Nat'l Fed. of Ind. Bus. v. Sebelius*, 567 U.S. 519, 570 (2012), the Supreme Court stated that "[t]he question of the constitutionality of action taken by Congress does not depend on recitals of power which it undertakes to exercise." If confirmed, I would evaluate the constitutionality of such a law by following the procedure stated in my response to Question 3.

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

Response: The Supreme Court has held that the Due Process Clauses of the Fifth and Fourteenth Amendment protect certain fundamental rights that are "objectively, deeply rooted in this Nation's history and tradition and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed." *Washington v. Glucksberg*, 521 U.S. 702, 720-721 (1997). Fundamental rights previously recognized by the Supreme Court include: the right to marry a person of a different race; the right to marry while in prison; the right to obtain contraceptives; the right to reside with relatives; the right to make decisions about the education of one's children; the right not to be sterilized without consent; the right in certain circumstances not to undergo involuntary surgery, forced administration of drugs, or other substantially similar procedures; the right to engage in private, consensual sexual acts; and the right to marry a person of the same sex. *See Dobbs v. Jackson Women's Health Org.,* 597 U.S. 215, 256-257 (2022) (listing rights previously determined by the Supreme Court).

11. What rights are protected under substantive due process?

Response: 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: *West Coast Hotel Co. v. Parrish,* 300 U.S. 379 (1937), overruled *Lochner v. New York*, 198 U.S. 45 (1905). Therefore, *Lochner* is no longer binding precedent. By contrast, in *Griswold v. Connecticut*, 381 U.S. 479, 486 (1965), the Supreme Court held that a state law banning the use of contraceptives by married couples was a violation of substantive due process under the Constitution. The rights identified in my response to Question 10, including the right to contraceptives, remain good law.

If confirmed, I would faithfully apply the binding precedent of the Supreme Court and Seventh Circuit.

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

Response: The Supreme Court has held that through the Commerce Clause, Congress has the power to regulate: (1) "the use of the channels of interstate commerce," (2) "the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities," and (3) "those activities that substantially affect interstate commerce." *United States v. Lopez*, 514 U.S. 549, 558-559 (1995); *See also United States v. Morrison*, 529 U.S. 598, 617 (2002) (rejecting the argument that Congress may regulate noneconomic, violent criminal conduct based solely on the conduct's aggregate effect on interstate commerce). If confirmed, I would faithfully apply all binding Supreme Court and Seventh Circuit precedent.

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

Response: A group qualifies as a "suspect class" if it "possess[es] an immutable characteristic determined solely by the accident of birth" or if it 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). The Supreme Court has identified race, national origin, religion, and alienage as suspect classes for which strict scrutiny applies. *See Graham v. Richardson*, 403 U.S. 365, 371-72 (1971).

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

Response: The Supreme Court has stated 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." *Lopez*, 514 U.S. at 552.

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

Response: I would review and apply binding Supreme Court and Seventh Circuit precedent. *See Youngstown Sheet & Tube v. Sawyer*, 343 U.S. 579, 587-88 (1952) (holding that "[i]n the framework of our Constitution, the President's power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker. The Constitution limits his functions in the lawmaking process to the recommending of laws he thinks wise and the vetoing of laws he thinks bad. And the Constitution is neither silent nor equivocal about who shall make laws which the President is to execute.").

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

Response: Judges are obligated to apply legal binding precedent to the established facts of each case before them. Empathy should not play a role in a judge's consideration of a case.

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

Response: Both are undesirable. If confirmed, I would faithfully apply Supreme Court and Seventh Circuit precedent to determine the constitutionality of a law and avoid both undesirable outcomes.

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 researched judicial review trends of the Supreme Court and cannot opine as to why it occurred. Aggressive exercise of judicial review could raise concerns that the judiciary is exceeding its constitutional role as defined in Article III of the Constitution. Conversely, passivity on the part of the judiciary could result in the legislative and executive branches exceeding their constitutional roles as defined in Article I and Article II of the Constitution. If confirmed, I would faithfully apply all binding precedent of the Supreme Court and Seventh Circuit.

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

Response: Black's Law Dictionary (11th ed. 2019), defines "judicial review" as a "court's power to review the actions of other branches or levels of government." By contrast, 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…are binding on the coordinate branches of the federal government and the states." *Id.*

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: As an Indiana trial court judge and as a nominee for the district court, it is not appropriate for me to offer an opinion on how elected officials should strike this balance. Notwithstanding, in *Cooper v. Aaron,* 358 U.S. 1, 18-19 (1958), the Supreme Court held that elected officials have an obligation to follow federal court decisions. In addition, Article VI of the Constitution requires all federal and state legislative, executive, and judicial officers to take an oath or affirmation to support 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: The role of a judge is limited to applying the rule of law to the established facts of the case being decided. This limited role is essential in promoting judicial integrity, public confidence, and predictability.

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 confirmed, I am obligated to apply Supreme Court and Seventh Circuit precedent. If there is no controlling precedent on point, a district court judge should consider whether the precedent is so closely analogous that it should be applied.

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: 18 U.S.C. § 3553(a) contains factors that district court judges are required to consider when making sentencing decisions. Section 3553(a) does not mention race, gender, nationality, sexual orientation or gender identity. Therefore, I would not consider them.

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 the Biden Administration's definition of "equity" or the context in which it was made. Black Law's Dictionary (11th ed. 2019) defines "equity" to include fairness, impartiality, and evenhandedness. If presented with a question involving the term "equity", I would faithfully apply the binding precedent of the Supreme Court and Seventh Circuit fairly and impartially.

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

Response: Merriam-Webster Dictionary defines "equity" to include freedom from bias or favoritism and "equality" to include the quality or state of being equal.

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

Response: As stated in my response to Question 25, I am not familiar with the Biden Administration's statement defining "equity" or the context in which it was made. The Fourteenth Amendment guarantees "the equal protection of the laws." If confirmed, I would faithfully follow Supreme Court and Seventh Circuit precedent applying the Fourteenth Amendment.

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

Response: I do not have a definition for this phrase.

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

Response: I do not have a definition for this phrase.

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

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

Senator John Kennedy
Questions for the Record

Gretchen S. Lund

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

   Response: Yes. 18 U.S.C. § 3591 outlines certain offenses whereby defendants may be sentenced to death. The procedures for courts to follow when considering the death sentence are found in 18 U.S.C. § 3591-3599. If confirmed, I will faithfully follow binding precedent of the Supreme Court, Seventh Circuit, and the federal statutory procedure for sentencing defendants, including 18 U.S.C. § 3591-3599.

   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: As an Indiana trial court judge, I follow Indiana Supreme Court and Indiana Court of Appeals precedent. If confirmed as a district court judge, I will follow Supreme Court and Seventh Circuit precedent. In doing so, I will follow the approach reflected in that precedent, and I will fully, fairly, and impartially, apply that precedent to the established facts of the case before me. Consistent with my practice in state court, I will treat all litigants and lawyers with respect and dignity.

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

   Response: The Supreme Court has held that the text and original meaning of a constitutional provision are important in interpreting the Constitution. *See Currier v. Virginia*, 138 S. Ct. 2144, 2153 (2018) (analyzing the Fifth Amendment and noting that "[t]his Court's contemporary double jeopardy cases confirm what the text and history suggest."); *See also District of Columbia v. Heller*, 554 U.S. 570, 576 (2008) (analyzing the Second Amendment and quoting *United States v. Sprague*, 282 U.S. 716, 731 (1931)

("[t]he Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning.")). If confirmed, I would faithfully apply Supreme Court and Seventh Circuit precedent as well as the original public meaning of the text when interpreting the Constitution.

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: The Supreme Court has held that constitutional interpretation begins by applying the original public meaning of the text. *See Heller*, 554 U.S. at 605. In the rare instance of an interpretation question of first impression of a constitutional provision, I would look to the analysis methods set out in binding precedent of the Supreme Court and Seventh Circuit.

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

   Response: The Supreme Court has held that if the text is clear, the analysis ends. *See Bostock v. Clayton County,* 140 S. Ct. 1731, 1749 (2020) (stating "when the meaning of the statute's terms is plain, our job is at an end. The people are entitled to rely on the law as written, without fearing that courts might disregard its plain terms based on some extratextual consideration."). If confirmed, I would faithfully apply Supreme Court and Seventh Circuit precedent as well as the ordinary public meaning of the text when interpreting a statute.

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

   Response: In determining the meaning of a statute or provision, I would faithfully apply Supreme Court and Seventh Circuit precedent. If no such precedent exists, I would review the statutory text. If the text is clear, the analysis ends. *See id.* If the text is not clear, I would look to rules of statutory construction authorized by the Supreme Court and Seventh Circuit.

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: The Constitution has a fixed and enduring meaning. *See New York State Rifle & Pistol Assoc., Inc. v. Bruen,* 597 U.S. 1, 31 (2022). It may be modified only through the amendment process as defined in Article V of the Constitution.

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

Response: In Part II (A) of the Supreme Court's decision in *Brown v. Davenport*, 596 U.S. 118 (2022), the Court outlined the history of habeas petitions extending back to the English Monarchy. *Id.* at 127-129. The Court noted that in both English and American law, a habeas court could examine only the power and authority of a court to act, not the correctness of its conclusions. *Id.* at 129. In 1953, however, the Court noted that federal habeas practice changed when the Supreme Court held that a state-court judgment "is not res judicata" in federal habeas proceedings with respect to a petitioner's federal constitutional claims. *Id.* at 130 (referring to *Brown v. Allen*, 344 U.S. 443, 458 (1953)). Therefore, the "traditional distinction between jurisdictional defects and mere errors in adjudication no longer restrained federal habeas courts" leading to the increase of habeas petitions filed in federal district courts. *Brown*, 596 U.S. at 130-131.

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: In Part IV of the Supreme Court's decision in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.,* 600 U.S. 181 (2023), the Court held that race-based admissions "must comply with strict scrutiny, they may never use race as a stereotype or negative, and – at some point – they must end." *Id.* at 213. The Court held that the admissions systems at issue failed each of these criteria and invalidated them under the Equal Protection Clause of the Fourteenth Amendment. *Id.* Specifically, the Court held that the admissions policy goals asserted were commendable, but not sufficiently coherent for purposes of strict scrutiny. *Id.* at 214. Second, the Court held that the admissions programs failed to articulate a meaningful connection between the means they employ and the goals they pursue. *Id.* at 215. Further, the Court held that the race-based admissions systems failed to comply with the Equal Protection Clause that race may never be used as a "negative" and that it may not operate as a stereotype. *Id.* at 218. Finally, the Court held that the admissions programs lacked a logical end-point. *Id.* at 225.

12. Please summarize Part III of the U.S. Supreme Court's decision in *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023).

Response: The owner of 303 Creative LLC created websites to celebrate and promote weddings and unique love stories. The owner filed a lawsuit seeking an injunction to prevent the State of Colorado from forcing her to create websites celebrating marriages that defy her belief that marriage should be reserved to unions between one man and one woman. In Part III of the Supreme Court's decision in *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023), the Court held that creating wedding websites involved the creator's speech and that compelling speech the creator did not wish to provide violated her First Amendment rights. *Id.* at 592 (citing *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc.,* 515 U.S. 557, 573 (1995); *Boy Scouts of America v. Dale,* 530 U.S. 640, 650-656 (2000)).

13. Please summarize Part II of the U.S. Supreme Court's decision in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111 (2022).

Response: In Part II of the Supreme Court's decision in *New York State Rifle & Pistol Assoc., Inc. v. Bruen*, 142 S. Ct. 2111 (2022), the Court declined to adopt the two-part approach in *Heller* and *McDonald* that combined history with means-end scrutiny. *Id.* at 2126. Instead, the Supreme Court held:

> "[W]hen the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.'"

Id. The test set forth requires courts to assess whether modern firearms regulations are consistent with the Second Amendment's text and historical understanding. *Id.* at 2131.

14. 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 the Supreme Court's decision in *Dobbs v. Jackson Women's Health Org.,* 597 U.S. 215 (2022), the Court explained the standard used in determining whether the Fourteenth Amendment's reference to "liberty" protects a particular right, whether the right at issue in *Dobbs* was rooted in our Nation's history and tradition and an essential component of what has been described as "ordered liberty," and whether the right to obtain an abortion was part of a broader entrenched right supported by other precedents. *Id.* at 234. In its analysis, the Court held that a State's regulation of abortion is not a sex-based classification and not subject to the "heightened scrutiny" that applies to such classifications. *Id.* at 237. It further held that the right to abortion is not deeply rooted in the Nation's history and traditions. *Id.* at 250. Further, the Court distinguished the abortion right from rights recognized in the cases on which *Roe* and *Casey* relied. *Id.* at 257.

15. 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: In Part III of the Supreme Court's decision in *Dobbs v. Jackson Women's Health Org.*, 596 U.S. 215 (2022), the Court considered the doctrine of stare decisis. *Id.* at 263. In doing so, the Court laid out five factors it considered when overruling the previous precedent of *Roe* and Casey. *Id.* at 268. Specifically, the Court gave "the nature of their error, the quality of their reasoning, the "workability" of the rules they imposed on the country, their disruptive effect on other areas of the law, and the absence of concrete reliance," as its reasoning for overruling precedent. *Id*.

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: In *Rivas-Villegas v. Cortesluna*, 595 U.S. 1 (2021), the Court employed the legal rule that when determining qualified immunity in a Fourth Amendment context, specificity is important so that an officer has notice that his or her specific conduct is unlawful. *Id.* at 6 (holding that "to show a violation of clearly established law, Cortesluna must identify a case that put Rivas-Villegas on notice that his specific conduct was unlawful."). In this case, the Court reversed the Ninth Circuit's determination that the officer was not entitled to qualified immunity because the officer did not have notice that a specific use of force was unlawful. *Id.* at 9 ("Precedent involving similar facts can help move a case beyond the otherwise hazy borders between excessive and acceptable force and thereby provide an officer notice that a specific use of force is unlawful." quoting *Kisela v. Hughes*, 138 S. Ct. 1148 (2018) (per curium)).

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: Federal Rule of Civil Procedure 65 governs the issuance of injunctions by federal courts. Injunctions having nationwide effect have been issued by federal courts, however, neither the Supreme Court nor the Seventh Circuit has issued binding precedent as to the precise circumstances in which a nationwide injunction can be issued. If confirmed, I will faithfully follow all Supreme Court and Seventh Circuit precedent.

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 describe what role U.S. Supreme Court dicta would play in your decisions.

Response: If confirmed, I will follow binding precedent of the Supreme Court and Seventh Circuit. Dicta is not binding precedent.

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: As a Judge for the past 15 years, I have presided over approximately 27 jury trials, 489 bench trials, and have adjudicated approximately 28,000 cases. As a Deputy Prosecuting Attorney, I regularly tried criminal matters to the bench. As a Law Clerk, I assisted Judge William Lawrence with matters tried to the bench or jury. I have not personally served as lead counsel in a bench or jury trial in federal district court.

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: None.

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 have never had a Facebook, Reddit, Instagram, Threads, TikTok or LinkedIn account. In 2022, I signed up for a Twitter account to receive information from my daughter's school. I deleted the account in 2023 after my daughter's graduation. I have never posted on any social media platform.

23. Why should Senator Kennedy support your nomination?

Response: I have had the privilege of serving as a judge in the State of Indiana for 15 years. During that time, I have handled a wide variety of cases and worked through challenging situations that often arise in our courts. In each instance, I have done my best to uphold my oath to the United States Constitution and the Constitution of the State of Indiana. I have approached each case with an open mind and an appreciation for the positions of the lawyers and litigants who appear in my court. In each case, I have fully and impartially applied the rule of law to the established facts. As a judge, I hold myself to a high standard. I approach my work and my life with great humility knowing that I am blessed to serve my community.

Questions from Senator Thom Tillis
for Gretchen S. Lund nominee to be United States District Judge
for the Northern District of Indiana

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 when interpreting and applying the law.

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

   Response: Impartiality is an expectation for a judge.

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

   Response: Black's Law Dictionary (11th ed. 2019) defines "judicial activism" as "[a] philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions, [usually] with the suggestion that adherents of this philosophy tend to find constitutional violations and are willing to ignore governing texts and precedents." Judicial activism is inappropriate.

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: If confirmed, I would interpret the law in accordance with binding precedent of the Supreme Court and Seventh Circuit regardless of any belief I may have about the desirability or undesirability of the outcome.

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 follow and apply binding precedent interpreting the Second Amendment, including the Supreme Court holdings in *District of Columbia v. Heller*, 554 U.S. 570 (2008), *McDonald v. City of Chicago,* 561 U.S. 742 (2010), and *New York State Rifle & Pistol Ass'n. v. Bruen*, 597 U.S. 1 (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: Qualified immunity "shields officials from civil liability so long as their conduct 'does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Mullenix v. Luna*, 577 U.S. 7, 11 (2015) (quoting *Pearson v. Callahan*, 555 U.S. 223, 232 (2009)). In determining whether qualified immunity protects a government official, the court must make two inquiries: (1) whether the plaintiff has alleged a violation of a constitutional right; and (2) whether the right was clearly established at the time of defendant's alleged misconduct. *Mullenix,* 577 U.S. at 11-12. If confirmed, I would faithfully apply Supreme Court and Seventh Circuit precedent in the context of qualified immunity.

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: "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." *Pearson,* 555 U.S. at 231. As an Indiana trial court judge and judicial nominee to the federal bench, it would be inappropriate for me to offer an opinion on whether I believe an area of law has been correctly decided when issues pertaining to that area of law could come before me in future cases. If confirmed, I would faithfully apply Supreme Court and Seventh Circuit precedent in the context of qualified immunity.

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

Response: Please see my responses to Questions 7 and 8.

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

Response: Article 1 § 8 of the Constitution grants Congress the power to "promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." Courts enforce patents and copyrights granted by Congress to authors and inventors. *See Golan v. Holder*, 565 U.S. 302 (2012). If confirmed, I would faithfully apply binding precedent from the Supreme Court, Seventh Circuit, and Federal Circuit on intellectual property issues that come 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: In the Northern District of Indiana, cases are randomly assigned to various judicial officers across the district. This limits the ability of a litigant to engage in forum or judge shopping.

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 an Indiana trial court judge and judicial nominee to the federal bench, the Canons of the Code of Conduct for United States Judges prohibit me from commenting on the quality of the reasoning of Supreme Court precedents. If confirmed, I would faithfully apply binding legal precedent from the Supreme Court, Seventh Circuit, and Federal Circuit on any patent eligibility issues that would come before me.