Senator Lindsey Graham, Ranking Member
Questions for the Record
Judge Susan Mason Bazis
Nominee to be United States District Judge for the District of Nebraska

1. **Are you a citizen of the United States?**

   Response: Yes.

2. **Are you currently, or have you ever been, a citizen of another country?**
   a. **If yes, state countries and dates of citizenship.**
   b. **If you are currently a citizen of a country besides the United States, do you have any plans to renounce your citizenship?**
      i. **If not, please explain why.**

   Response: No.

3. **Is it appropriate for a federal judge to consider an immutable characteristic of an attorney when deciding whether to grant oral argument? If yes, please describe in which circumstances such consideration would be appropriate.**

   Response: No, it is not appropriate for a judge to consider an immutable characteristic of an attorney when deciding whether to grant oral argument.

4. **Is it appropriate for a federal judge to consider an immutable characteristic of an attorney when deciding whether to grant additional oral argument time? If yes, please describe in which circumstances such consideration would be appropriate.**

   Response: No, it is not appropriate for a judge to consider an immutable characteristic of an attorney when deciding whether to grant additional oral argument time.

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

   Response: No, it is not appropriate to consider foreign law in constitutional interpretation.

6. **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 this statement. A judge's values, opinions, or beliefs should never play into a judge's decision or interpretation of the Constitution or a statute. A judge is obligated to apply the law fairly and impartially to the facts of the case. This

includes binding precedent of the United States Supreme Court and Eighth Circuit. I have faithfully applied binding precedent in the matters that have come before me as a sitting judge for the last 16 years and would continue to do so if confirmed as a District Judge.

7. **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. It is improper for a judge to take this approach. It is improper for a lower court judge to issue an opinion knowing it is contrary to binding precedent. For the last 16 years, and the last 6 years as a magistrate judge, I have faithfully applied United States Supreme Court precedent and Eighth Circuit precedent and would continue to do so if confirmed as a District Judge.

8. **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.

9. **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.

10. **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 relief from the sentence as follows: by filing a direct appeal after his sentence, either to the District Judge, if they were sentenced on a misdemeanor by a magistrate judge under Federal Rules of Criminal Procedure 58(g)(2) or to the Eighth Circuit Court of Appeals if a District Judge sentenced the defendant on a misdemeanor, Federal Rules of Criminal

Procedure 58(g)(1), or on a felony under 28 U.S.C. §1291; by filing a motion attacking the sentence or that they had ineffective assistance of counsel under 28 U.S.C. §2255; by filing a petition for a writ of habeas corpus under 28 U.S.C. §2241; by filing a motion for compassionate release 28 U.S.C. §3582(c); by filing a motion to modify a sentence based on a sentencing range that was subsequently lowed by the Sentencing Commission pursuant to 28 U.S.C. §944(o), 28 U.S.C. §3582(2)

11. **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, sued separately Harvard College and the University of North Carolina regarding their race-based admissions programs arguing that they violate Title VI of the Civil rights Act of 1964 and the Equal Protection Clause of the Fourteenth Amendment. The trial courts found both programs were permissible under the Equal Protection Clause and the United States Supreme Court precedent. In the Harvard case the First Circuit affirmed, and the United States Supreme Court granted certiorari. In the University of North Carolina case the United States Supreme Court granted certiorari before judgment of the appellate court. The United States Supreme Court decided these cases jointly and found that both colleges admission programs were unconstitutional and violated the Equal Protection Clause of the Fourteenth Amendment.

12. **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: As a magistrate judge I made hiring decisions for my law clerk, my judicial assistant and my courtroom deputy. As the presiding judge of the County Court of the Fourth Judicial District in Nebraska I participated with a group to hire the chief bailiff for the court. Also, in my capacity as a judge I participated with a group who conducted interviews with candidates for the Director of the Office of Public Guardian. As an attorney I made hiring decisions for employees in my office.

13. **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.

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

    Response: No.

15. **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.

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

    Response: Yes. *See Students for Fair Admission, Inc. v. President and Fellow of Harvard College and University of North Carolina,* 600 U.S. 181 (2023); *Mark One Electric Company, Inc. v. City of Kansas City, Missouri,* 44 F.4th 1061 (8th 2022); *Kohlbek v. City of Omaha, Neb.,* 447 F.3d 552 (8th Cir. 2006); *Sherbrook Turf, Inc. v. Minnesota Dept. of Transp.,* 345 F.3d 964 (8th Cir. 2003).

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

    Response: The sole member-owner of a limited liability company that provided website and graphic design services sought to enter into the wedding website business. The petition brought a pre-enforcement action again members of the Colorado Civil rights Commission and the Colorado Attorney General, seeking to enjoin the defendants from forcing the plaintiffs, through enforcement of the Colorado Anti-Discrimination Act, to convey on wedding websites messages inconsistent with the member-owner's religious belief. The United States Supreme Court found that the wedding websites member-owner sought to create for her customers qualified as pure speech under the First Amendment and that it would violate the First Amendment for defendants to compel the member-owner to create speech she did not believe.

18. **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: Yes. *See Barnette* has not been overruled. In addition, the United States Supreme Court in *303 Creative LLC v. Elenis,* 600 U.S. 570 (2023), relied on portions of the quoted language from *Barnette* as set forth in your question above.

19. **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: As recognized by the Supreme Court, deciding whether a regulation is content based or content neutral is "not always a simple task." *Turner Broad Sys. v. FCC*, 512 U.S. 622 (1994). The primary question in evaluating content neutrality, "is whether the government has adopted a regulation of speech because of disagreement with the message it conveys." *Ward v. Rock Against Racism*, 491 U.S. 781 (1989). Some key considerations include whether the law, by its terms, distinguishes favored speech from disfavored speech based on the ideas or views expressed; whether the law confers benefits or burdens without reference to the views expressed; and if the purpose of the law is to regulate speech because of its message. *See Turner*, 512 U.S. at 645.

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

Response: "True threats" of violence are not protected speech. *Virginia v. Black,* 538 U.S. 343 (2003). In *Counterman v. Colorado,* 600 U.S. 66 (2023), the Supreme Court held that the First Amendment requires proof that the defendant had some subjective understanding of the threatening nature of his statements. The Supreme Court found that a reckless standard "strikes the right balance, offering enough breathing space for protected speech, without sacrificing too many of the benefits of enforcing laws against true threats." *Id.* (quoting *Elonis v. United States,* 575 U.S. 732 (2015)).

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

Response: The Supreme Court recognized in *Thompson v. Keophane*, 516 U.S. 99 (1995) that "the proper characterization of a question as one of fact or law is sometimes slippery." However, the Supreme Court has stated that cases involving purely legal issues "typically involve contests not about what occurred, or why an action was taken or

omitted, but disputes about the substance and clarify of pre-existing law." *Ortiz v. Jordan*, 562 U.S. 180 (2011). A purely legal issue can be resolved with reference only to the undisputed facts. *Id*. *See also Washington v. Denney*, 900 F.3d 549 (2018). Questions of fact, however, involve a determination of whether the evidence could support a finding that certain conduct occurred. *See Glaze v. Byrd*, 721 F.3d 528 (8th Cir. 2013).

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

Response: In a sentencing a judge is required to consider all of the factors in 18 U.S.C. § 3553(a) prior to sentencing someone. Congress has not assigned any one factor greater weight than any other. My personal beliefs have no role in any sentencing decision. If I were confirmed I would apply the factors in 18 U.S.C. § 3553(a), the United States Sentencing Guidelines, and any United States Supreme Court and Eighth Circuit precedent regarding the sentencing factors before imposing a sentence. I would also consider the presentence report and the argument of the government and the defendant.

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

Response: As a Magistrate Judge and a nominee for a District Judge position, I am prohibited from commenting on whether a Supreme Court decision was "well-reasoned." *See* Code of Conduct for United States Judges, Canon 3(A)(6). I have faithfully applied Supreme Court precedent as a Magistrate Judge and a State Court Judge and would continue to do so if I am confirmed as a District Judge.

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

Response: As a Magistrate Judge and a nominee for a District Judge position, I am prohibited from commenting on whether a Eighth Circuit decision was "well-reasoned." *See* Code of Conduct for United States Judges, Canon 3(A)(6). I have faithfully applied Eighth Circuit precedent as a Magistrate Judge and a State Court Judge and would continue to do so if I am confirmed as a District Judge.

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

Response: 18 U.S.C. § 1507 makes it a crime for any person "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, 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."

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

Response: As a Magistrate Judge and a nominee for a District Judge position, I am prohibited from commenting on the constitutionality of a statute. *See* Code of Conduct for United States Judges, Canon 3(A)(6). If confirmed, I would apply any Supreme Court and Eighth Circuit precedent, as I have done for the last 16 years, if I were asked to determine the constitutionality of this statute. I would note that the United States Supreme Court upheld a state statute modeled after 18 U.S.C. § 1507. *See Cox v. Louisiana*, 379 U.S. 559 (1965).

27. **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: As a Magistrate Judge and a judicial nominee, it is generally improper for me to comment on whether I believe a United States Supreme Court decision was decided correctly. *See* Code of Conduct for United States Judges, Canon 3(A)(6). However, due to it being highly unlikely that the issue of *de jure* racial segregation in public schools will be relitigated, consistent with the Code of Conduct for United States Judges, I believe I am permitted to provide my personal opinion that *Brown* was correctly decided.

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

Response: As a Magistrate Judge and a judicial nominee, it is generally improper for me to comment on whether I believe a United States Supreme Court decision was decided correctly. *See* Code of Conduct for United States Judges, Canon 3(A)(6). However, due to it being highly unlikely that the issue of inter-racial marriage will be relitigated, consistent with the Code of Conduct for United States Judges, I believe I am permitted to provide my personal opinion that *Loving* was correctly decided.

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

Response: As a Magistrate Judge and a judicial nominee, it is generally improper for me to comment on whether I believe a United States Supreme Court decision was decided correctly. *See* Code of Conduct for United States Judges, Canon 3(A)(6). The decision of *Griswold v. Connecticut* is binding precedent and if confirmed I would apply this precedent fully and faithfully.

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

Response: As a Magistrate Judge and a judicial nominee, it is generally improper for me to comment on whether I believe a United States Supreme Court decision was decided correctly. *See* Code of Conduct for United States Judges, Canon 3(A)(6). The United States Supreme Court overturned *Roe v. Wade* in *Dobbs v. Jackson Women's Health Organization,* 597 U.S. 215 (2022). The decision in *Dobbs* is binding precedent and if confirmed I would apply this precedent fully and faithfully.

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

Response: As a Magistrate Judge and a judicial nominee, it is generally improper for me to comment on whether I believe a United States Supreme Court decision was decided correctly. *See* Code of Conduct for United States Judges, Canon 3(A)(6). The United States Supreme Court overturned *Planned Parenthood v. Casey* in *Dobbs v. Jackson Women's Health Organization,* 597 U.S. 215 (2022). The decision in *Dobbs* is binding precedent and if confirmed I would apply this precedent fully and faithfully.

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

Response: As a Magistrate Judge and a judicial nominee, it is generally improper for me to comment on whether I believe a United States Supreme Court decision was decided correctly. *See* Code of Conduct for United States Judges, Canon 3(A)(6). The decision in *Gonzales v. Carhart* is binding precedent and if confirmed I would apply this precedent fully and faithfully.

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

Response: As a Magistrate Judge and a judicial nominee, it is generally improper for me to comment on whether I believe a United States Supreme Court decision was decided correctly. *See* Code of Conduct for United States Judges, Canon 3(A)(6). The decision in *District of Columbia v. Heller* is binding precedent and if confirmed I would apply this precedent fully and faithfully.

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

Response: As a Magistrate Judge and a judicial nominee, it is generally improper for me to comment on whether I believe a United States Supreme Court decision was decided correctly. *See* Code of Conduct for United States Judges, Canon 3(A)(6). The decision in *McDonald v. City of Chicago* is binding precedent and if confirmed I would apply this precedent fully and faithfully.

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

Response: As a Magistrate Judge and a judicial nominee, it is generally improper for me to comment on whether I believe a United States Supreme Court decision was decided correctly. *See* Code of Conduct for United States Judges, Canon 3(A)(6). The decision in *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* is binding precedent and if confirmed I would apply this precedent fully and faithfully.

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

Response: As a Magistrate Judge and a judicial nominee, it is generally improper for me to comment on whether I believe a United States Supreme Court decision was decided correctly. *See* Code of Conduct for United States Judges, Canon 3(A)(6). The decision in *New York State Rifle & Pistol Association v. Bruen* is binding precedent and if confirmed I would apply this precedent fully and faithfully.

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

Response: As a Magistrate Judge and a judicial nominee, it is generally improper for me to comment on whether I believe a United States Supreme Court decision was decided correctly. *See* Code of Conduct for United States Judges, Canon 3(A)(6). The decision in *Dobbs v. Jackson Women's Health* is binding precedent and if confirmed I would apply this precedent fully and faithfully.

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 a Magistrate Judge and a judicial nominee, it is generally improper for me to comment on whether I believe a United States Supreme Court decision was decided correctly. *See* Code of Conduct for United States Judges, Canon 3(A)(6). The decision in *Students for Fair Admissions, Inc. v. University of North Carolina and Students for Fair Admission Inc. v. President & Fellows of Harvard College* is binding precedent and if confirmed I would apply this precedent fully and faithfully.

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

Response: As a Magistrate Judge and a judicial nominee, it is generally improper for me to comment on whether I believe a United States Supreme Court decision was decided correctly. *See* Code of Conduct for United States Judges, Canon 3(A)(6). The decision in *303 Creative LLC v. Elenis* is binding precedent and if confirmed I would apply this precedent fully and faithfully.

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

Response: In evaluating whether a regulation or statutory provision infringes on Second Amendment rights, I would apply the United State Supreme Court's holding in *New York State Rifle & Pistol Association, Inc. v. Bruen,* 597 U.S. 1 (2022), which requires courts to assess whether modern firearms regulations are consistent with the Second Amendment's text and historical understanding. "Determining whether a historical regulation is proper analogue for a distinctly modern firearm regulation requires a determination of whether the two regulations are relevantly similar." *Id*. "When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct." *Id.* "The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Id*. "Only then may a court conclude that the individual's conduct falls outside the Second Amendment's "unqualified command." *Id*. I would faithfully follow *Bruen* and all other binding United States Supreme Court and Eighth Circuit precedent.

29. **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: No.

30. **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.

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

    Response: No.

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

    Response: Not Applicable.

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

    Response: No.

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

    Response: No.

32. **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.

33. **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.

34. **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 October 2022, U.S. Senator Deb Fischer's office announced an application process for applicants to fill a judicial vacancy in the District of Nebraska. I submitted my application materials on December 9, 2022, and was interviewed by Senator Fischer on January 9, 2023. On February 3, 2023, I was notified that I would be one of the names that was being forwarded to the White House for consideration. On February 23, 2023, I interviewed with attorneys from the White House Counsel's Office. On September 28, 2023, I was informed by officials at the White House Counsel's Office that my application would proceed. Since September 30, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On December 19, 2023, the President announced his intent to nominate me. On January 10, 2024 my name was forwarded to the Senate by President Biden.

35. **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.

36. **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.

37. **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.

38. **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.

39. **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.

40. **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.

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

Response: On February 23, 2023, I interviewed with attorneys from the White House Counsel's Office. On September 28, 2023, I was informed by

officials at the White House Counsel's Office that my application would proceed. Since September 30, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice.

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

Response: I received these questions from the Department of Justice, Office of Legal Policy (OLP) on January 31, 2024. Upon receipt of these questions, I drafted responses to the questions and forwarded them to OLP. I then made limited edits, finalized my responses, and forwarded them to OLP.

Senator Hirono Questions for the Record for the January 24, 2024, Hearing in the Senate Judiciary Committee entitled "Nominations."

QUESTIONS FOR SUSAN M. BAZIS

Sexual Harassment

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:

QUESTIONS:

1. **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.

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

   Response: No.

Senator Jon Ossoff
Questions for the Record for Judge Susan M. Bazis
January 24, 2024

1. **Will you pledge to faithfully apply the law without bias and without regard for your personal policy or political preferences?**

   Response: Yes.

2. **How will you approach First Amendment cases?**

   Response: I would first consider relevant Supreme Court and Eighth Circuit precedent to determine whether the constitutional provision's text has been interpreted. If it has not, I would look at the plain meaning of the text of the constitutional provision. If the text of the constitutional provision is unambiguous, I would apply its plain meaning and my inquiry would end there. If the text of the constitutional provision is ambiguous, I would look to the rules of statutory construction authorized by the Supreme Court and Eighth Circuit. I would also consult any persuasive, non-binding authority from other circuit and district courts.

   a. **In your view, why are First Amendment protections of freedom of speech, publication, assembly, and exercise of religion vital in our society?**

      Response: As a Magistrate Judge and a judicial nominee, I am prohibited from expressing any personal views I might hold. *See* Code of Conduct for United States Judges, Canon 3(A)(6). If confirmed, I would apply any Supreme Court and Eighth Circuit precedent, as I have done for the last 16 years, to any First Amendment issues that come before me.

3. **In your experience, why is it critical that indigent defendants have access to public defense under the Sixth Amendment right to counsel and precedent set in *Gideon v. Wainwright*?**

   Response: For a defendant to have a fair trial and be treated equal under the law, an indigent defendant needs to have competent, zealous representation, just as someone who can afford a lawyer. This promotes a fair system of justice. The Sixth Amendment right to counsel is necessary to ensure fundamental human rights of life and liberty. *Gideon v. Wainwright,* 372 U.S. 335 (1963).

4. **In your experience, what are the challenges faced by parties in civil or criminal proceedings for whom English is not their first language?**

   Response: In my experience, the biggest issue faced by parties whom English is not their first language is their understanding of the proceedings. In criminal matters, there must be an interpreter, but the court is still obligated to make sure the defendant understands what they are charged with, what the penalties are, if they are released what conditions

they must follow and what will happen next in their case. In civil matters, the issue is the same, whether the individual understands what is happening in the case and what they must do if they will be representing themselves. While the courts are not required to provide interpreters in civil matters the court still has an obligation to make sure the individual understands what is occurring and what is expected of them next.

a. **What do you see as the role of language access in courts in protecting due process rights and ensuring access to justice?**

   Response: Without individuals having access to interpreters, their legal rights may not be protected due to misunderstandings of court proceedings or other matters. It may also prevent them from having access to justice.

Senator Mike Lee
Questions for the Record
Susan M. Bazis, Nominee for District Court Judge for the District of Nebraska

1. How would you describe your judicial philosophy?

Response: As a Magistrate Judge for the last seven years, and a state court judge for almost ten years prior to being a magistrate judge, I have decided all cases that come before me based on the facts of the case and the applicable law. I have always tried to be fair and impartial. I am always prepared and review the statutes that are applicable, the constitution, and all Supreme Court and Eighth Circuit precedent on the issues. I then apply the law to the facts of the case in front of me and try to rule on the matter diligently and expeditiously. If confirmed as a District Judge, I will continue to abide by this philosophy and continue to be fully prepared for every hearing, make sure that all that come before me feel that they are heard, and fairly and impartially decide each matter as I have done for the last 16 years.

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

Response: I would first look at any Eighth Circuit precedent or Supreme Court precedent that has interpreted the statute. If there is no binding precedent I would start with looking at the plain meaning of the text of the statute. If there is no ambiguity within the text of the statute then my inquiry would end there. If there is ambiguity, I would look to the rules of statutory construction authorized by the Supreme Court and Eighth Circuit. I would also consult any persuasive, non-binding authority from other circuit and district courts. I also may consult legislative history but only if such analysis is permitted under applicable Supreme Court and Eighth Circuit precedent.

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

Response: I would first consider relevant Supreme Court and Eighth Circuit precedent to determine whether the constitutional provision's text has been interpreted. If it has not, I would look at the plain meaning of the text of the constitutional provision. If the text of the constitutional provision is unambiguous, I would apply its plain meaning and my inquiry would end there. If the text of the constitutional provision is ambiguous, I would look to the rules of construction authorized by the Supreme Court and Eighth Circuit. I would also consult any persuasive, non-binding authority from other circuit and district courts.

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

Response: The United States Supreme Court has applied the original meaning of the text and historical understanding when analyzing constitutional provisions. *See New*

York State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1 (2022); *District of Columbia v. Heller,* 544 U.S. 570 (2008); *Crawford v. Washington,* 541 U.S. 36 (2004). If confirmed, I would faithfully apply United States Supreme Court and Eighth 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: The "plain meaning" of a statute or constitutional provision is fixed at the time of enactment, and it does not change or evolve over time. *See New York State Rifle & Pistol Ass'n v. Bruen,* 597 U.S. 1 (2022); *Bostock v. Clayton County, Georgia,* 140 S. Ct. 1731 (2020) ("This Court normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment.").

7. What are the constitutional requirements for standing?

Response: The requirements for Article III standing are that: (1) the plaintiff has suffered an injury in fact; (2) that the injury be fairly traceable to the actions of the defendant: and (3) it must be likely that the injury will be redressed by the lawsuit. *Biden v. Nebraska,* 143 S. Ct. 2355 (2023).

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. The Supreme Court in *McCullough v. Maryland,* 17 U.S. 316 (1819), held that the Necessary and Proper Clause of the constitution grants Congress implied powers necessary to implement its enumerated powers.

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

Response: Congress is not required to cite a specific constitutional provision for its authority. *National Federation of Independent Business v. Sebelius,* 567 U.S. 519 (2012). I would follow United States Supreme Court and Eighth Circuit precedent to evaluate the constitutionality of a law that does not reference a specific Article I enumerated power. I would approach the analysis as described in questions 2 and 3 above.

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

Response: Yes, the United States Supreme Court has held that certain rights, not expressly enumerated in the Constitution, are protected under the Due Process Clauses of the Fifth and Fourteenth Amendments. Those unenumerated rights are those that are "deeply rooted in this Nation's history and tradition." *Washington v. Glucksberg,* 521 U.S. 702 (1997). The United States Supreme Court has recognized various unenumerated rights such as the right to marry, *Loving v. Virginia,* 388 U.S. 1 (1967); the right to have children, *Skinner v. Oklahoma ex rel. Williamson,* 326 U.S. 535; to marital privacy, *Griswold v. Connecticut,* 381 U.S. 479 (1965); the right to make decisions about the education and upbringing of one's children, *Meyer v. Nebraska,* 262, U.S. 390 (1923).

11. What rights are protected under substantive due process?

Response: The United States Supreme Court has held that that the Due Process Clauses of the Fifth and Fourteenth Amendments "specifically protects those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition." *Washington v. Glucksberg,* 521 US 702 (1997). Additionally, 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: The United States Supreme Court precedent governs which rights are protected by substantive due process. If I were fortunate enough to be confirmed, I would follow Untied States Supreme Court precedent and Eighth Circuit precedent in determining any asserted constitutional right.

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

Response: The United States Supreme Court identified the three broad categories of activity that Congress may regulate under its commerce power. "First, Congress may regulate the use of 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." *United States v. Lopez,* 541 U.S. 549, 558-59 (1995).

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

Response: The United States Supreme Court has observed that a suspect class is one "saddled with such disabilities, or subjected to such 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 Retirement v. Murgia,* 427 U.S. 307, 313 (1976) (quoting *San Antonio School District v. Rodriquez,* 411 U.S. 1 (1973)). The United States Supreme Court has held that race, religion, national origin and alienage are suspect classes under the Constitution and would trigger strict scrutiny. *City of Cleburne, Tex. v. Cleburne Living Center,* 473 U.S. 432 (1985); *City of New Orleans v. Dukes,* 427 U.S. 297 (1976).

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

Response: The United States Supreme Court has stated that the system of separated powers and checks and balances established in the Constitution was regarded by the Framers as "a self-executing safeguard against the encroachment of aggrandizement of one branch at the expense of the other." *Morrison v. Olson,* 487 U.S. 654 (1998).

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 United States Supreme Court and Eighth Circuit precedent in deciding a case in which one branch assumed an authority not granted it by the text of the Constitution. *See Youngstown Sheet & Tube Co. v. Sawyer,* 343 U.S. 579 (1952).

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

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

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 and unacceptable 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 am not aware that the invalidation of federal statutes by the Supreme Court has become significantly more common. As a Magistrate Judge I have faithfully applied United States Supreme Court and Eighth Circuit precedent and would continue to do so if I am fortunate enough to be confirmed as a District Judge.

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." 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: All elected officials take an oath to defend the Constitution and are bound by the United States Supreme Court's interpretation of the Constitution. *Cooper v. Aaron,* 348 U.S. 1 (1958). As a Magistrate Judge and a nominee for a District Judge position, I am prohibited from commenting further on how elected officials should balance competing interests they may have.

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: It is important to keep in mind the limited role of the judiciary. It is for the legislative branch and the executive branches to make and enforce the law. A judge's role is to apply the law to the facts of the case that is before the court. A judge should do this faithfully and impartially without passion, prejudice, fear, or favor. Each branch of government must remain faithful to their roles in the government. This is the only way the government may serve the people of the United States as guaranteed by the Constitution.

23. As a federal judge, you would be bound by both Supreme Court precedent and prior circuit court precedent. What is the duty of a federal 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 federal judge extend the precedent to cover new cases, or limit its application where appropriate and reasonably possible?

Response: I am bound by United States Supreme Court precedent and Eighth Circuit precedent. This is what I have done for the last seven years as a Magistrate Judge and would continue to do if confirmed as a District Judge. A lower court is bound to follow precedent even if the court may question the precedent it is bound to apply. The Supreme Court is the only one that can overrule its precedent.

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: None. A sentencing judge may only consider the factors set forth in 18 U.S.C. § 3553(a), including pertinent Sentencing Commission policy statements. One such policy statement is that race, sex, national origin, creed religion, and socio-economic stats "are not relevant in the determination of a sentence." U.S.S.G. § 5H1.10.

25. The Biden Administration has defined "equity" as: "the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality." Do you agree with that definition? If not, how would you define equity?

Response: I am not familiar with this statement by the Biden Administration or the context in which it was made. Black's Law Dictionary (11th ed. 2019) lists nine definitions of equity including "fairness; impartiality; evenhanded dealing."

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" as "justice according to a natural law or right; *specifically:* freedom from bias or favoritism." Merriam-Webster Dictionary defines "equality" as "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 response to Question 26, I am not familiar with the Biden Administration's statement defining "equity" or the context in which it was made. The 14th Amendment guarantees "the equal protection of the laws." If confirmed, I would faithfully follow Supreme Court and Eighth Circuit precedent applying the Fourteenth Amendment.

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

Response: I do not have my own definition for "systemic racism." Merriam-Webster Dictionary defines "systemic racism" as "the oppression of a racial group to the advantage of another as perpetuated by inequity within interconnected systems (such as political, economic, and social systems)."

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

Response: I do not have my own definition for "critical race theory." Merriam-Webster Dictionary defines "critical race theory" as "a group or 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.

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

Questions for the Record for Susan Mason Bazis, nominated to be United States District Judge for the District of Nebraska

I. Directions

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

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

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

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

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

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

II. Questions

1. Is racial discrimination wrong?

Response: Yes. Racial discrimination is unlawful pursuant to federal statutes and the United States Constitution.

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

Response: As a Magistrate Judge and a and judicial nominee, I am prohibited from expressing an opinion regarding matters that may come before the courts. *See* Code of Conduct for United States Judges, Canon 3(A)(6). Unenumerated rights, which are rights "deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty," are protected. *Washington v. Glusckberg,* 521 U.S. 702 (1997). If confirmed, as I have done for the last 16 years, I would faithfully apply United States Supreme Court and Eighth Circuit precedent.

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

Response: As a Magistrate Judge for the last seven years, and a state court judge for almost ten years prior to being a Magistrate Judge, I have decided all cases that come before me based on the facts of the case and the applicable law. I have always tried to be fair and impartial. I am always prepared and review the applicable statutes, Constitution, and all Supreme Court and Eighth Circuit precedent on the issues. I then apply the law to the facts of the case in front of me and diligently and expeditiously rule on the matter. If confirmed as a District Judge, I will continue to abide by this philosophy and continue to be fully prepared for every hearing, make sure that all that come before me feel that they are heard, and fairly and impartially decide each matter as I have done for the last 16 years. I am not sufficiently familiar with the judicial philosophies of these Courts to provide an opinion on which judicial philosophy is most analogous to my own.

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

Response: I do not attach any particular label to myself. Black's Law Dictionary (11th ed. 2019) defines "originalism" as "[t]he doctrine that words of a legal instrument are to be given the meanings they had when they were adopted" and as "the canon that a legal text should be interpreted through the historical ascertainment of the meaning that it would have conveyed to a fully informed observer at the time when the text first took effect." The United States Supreme Court has applied originalism to decide both

statutory and constitutional issues. *See, e.g., New York State Rifle & Pistol Ass'n v. Bruen,* 142 S. Ct. 2111 (2022); *District of Columbia v. Heller,* 554 U.S. 570 (2008); *Crawford v. Washington,* 541 U.S. 36 (2004). If confirmed, as I have done for the last 16 years, I will faithfully apply United States Supreme Court and Eighth Circuit precedent.

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

Response: Black's Law Dictionary (11th ed. 2019) defines living constitutionalism as "[t]he doctrine that the Constitution should be interpreted and applied in accordance with changing circumstances and, in particular, with changes in social values." I do not attach any particular label to myself. If confirmed, I would, as I have done for the last 16 years, faithfully apply United States Supreme Court and Eighth Circuit precedent.

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

Response: If I were presented with a constitutional issue not resolved by United States Supreme Court or Eighth Circuit precedent, I would look at the text of the provision at issue and interpret it in a manner consistent with the methods of interpretation that the Supreme Court has used in the most analogous circumstances. Original public meaning of a legal text has been recognized as an appropriate means of constitutional interpretation in some instances, such as questions involving the Second Amendment. *See District of Columbia v. Heller*, 554 U.S. 570 (2008); *New York State Rifle & Pistol Ass'n v. Bruen,* 142 S. Ct. 2111 (2022). If this did not resolve the issue, I would then look to other circuit and district court decisions with analogous circumstances, as well as the cannons of construction.

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

Response: If confirmed I would faithfully apply United States Supreme Court and Eighth Circuit precedent to cases that are before me. In construing statutes, the Supreme Court has said that a court "normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment." *Bostock v. Clayton County, Georgia,* 140 S. Ct. 1731 (2020). The Supreme Court has taken a similar approach with some parts of the Constitution. *See, New York State Rifle & Pistol Ass'n v. Bruen,* 142 S. Ct. 2111 (2022).

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

Response: The Constitution is an enduring document which does not change unless amended through the procedures prescribed in Article V of the Constitution. However, the Supreme Court has recognized that while the meaning of the Constitution is fixed according to the understandings of those who ratified it, it must "apply to circumstances beyond those the Founders specifically anticipated." *New York State Rifle & Pistol Ass'n v. Bruen,* 142 S. Ct. 2111 (2022). For example, "even though the Second Amendment's definition of 'arms' is fixed according to its historical understanding, that general definition covers modern instruments that facilitate armed self-defense." *Id*.

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

Response: Yes. It is binding precedent.

a. Was it correctly decided?

Response: As a Magistrate Judge and a judicial nominee, I am prohibited from expressing any personal beliefs I might hold or commenting on whether an opinion of the Supreme Court was "correctly decided." *See* Code of Conduct for United States Judges, Canon 3(A)(6). The decision in *Dobbs v. Jackson Women's Health* is binding precedent and if confirmed, I would fully and faithfully apply the decision.

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

Response: Yes. It is binding precedent.

a. Was it correctly decided?

Response: As a Magistrate Judge and a judicial nominee, I am prohibited from expressing any personal beliefs I might hold or commenting on whether an opinion of the Supreme Court was "correctly decided." *See* Code of Conduct for United States Judges, Canon 3(A)(6). The decision in *New York Rifle & Pistol Association v. Bruen* is binding precedent and if confirmed, I would fully and faithfully apply the decision.

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

Response: Yes. It is binding precedent.

a. Was it correctly decided?

Response: As a Magistrate Judge and a judicial nominee, I am prohibited from expressing any personal beliefs I might hold or commenting on whether an opinion of the Supreme Court was "correctly decided." *See* Code of Conduct for United States

Judges, Canon 3(A)(6). However, the holding in *Brown v. Board of Education* regarding racial discrimination in public schools is not likely to be relitigated. Therefore, consistent with the Code of Conduct for United States Judges, I believe *Brown v. Board of Education* was correctly decided.

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

Response: Yes. It is binding precedent.

a. Was it correctly decided?

Response: As a Magistrate Judge and a judicial nominee, I am prohibited from expressing any personal beliefs I might hold or commenting on whether an opinion of the Supreme Court was "correctly decided." *See* Code of Conduct for United States Judges, Canon 3(A)(6). The decision in *Students for Fair Admissions v. Harvard* is binding precedent and if confirmed, I would fully and faithfully apply the decision.

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

Response: Yes. It is binding precedent.

a. Was it correctly decided?

Response: As a Magistrate Judge and a judicial nominee, I am prohibited from expressing any personal beliefs I might hold or commenting on whether an opinion of the Supreme Court was "correctly decided." *See* Code of Conduct for United States Judges, Canon 3(A)(6). The decision in *Gibbons v. Ogden* is binding precedent and if confirmed, I would fully and faithfully apply the decision.

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

Response: 18 U.S.C. § 3142 provides a rebuttable presumption of pretrial detention for certain crimes including: crimes of violence; narcotic offenses with a term of imprisonment of ten years or more; offenses with a maximum punishment of life imprisonment or death; crimes involving human trafficking or slavery; certain offenses involving minor victims; and crimes that involve the possession or use of a firearm or other destructive device.

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

Response: I am unaware of explicit policy rationales for imposing a rebuttable presumption of pretrial detention for certain offenses. I am also not aware of any United States Supreme Court or Eighth Circuit precedent that addresses Congress's rational underlying the presumption. However, 18 U.S.C. § 3142(e)(1) provides that after a

hearing, the judge is to consider the safety of the community and risk of flight in determining if pretrial detention is appropriate. Therefore, it appears that Congress determined that defendants charged with certain offenses are more likely to pose a danger to the community and present a greater risk of flight.

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

Response: Yes. The Constitution and federal statutory law places limits on what obligations governments may impose on religious organizations. As to the Constitution, the Free Exercise Clause of the First Amendment acts as one of the limitations by restricting the government from treating "any comparable secular activity more favorably than religious exercise." *Tandon v. Newsom,* 593 U.S. 61 (2021). In a situation where the record reveals animus or hostility toward religious belief, strict scrutiny is applied. *Masterpiece Cakeshop Ltd. v. Colorado Civil Rights Comm'n,* 138 S. Ct. 1719 (2018).

An example of a statutory limitation is the Religious Freedom Restoration Act of 1993, which prohibits the federal government from "substantially burden[ing] a person's exercise of religion even if the burden results from a rule of general applicability," unless the application of the burden "(1) is in furtherance of a compelling government interest; and (2) is the least restrictive means of further that compelling government interest." 42 U.S.C. §2000bb-1 (a), (b). *See also Burwell v. Hobby Lobby Stores, Inc.,* 573 U.S. 682 (2014).

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

Response: Under the Free Exercise Clause of the First Amendment, enhanced protections are provided to religious freedom. As a result, government actions which burden an individual or organization's religious freedom will be subject to strict scrutiny. *See, e.g., 303 Creative LLC v. Elenis,* 143 S. Ct. 2298 (2023); *Kennedy v. Bremerton School District,* 142 S. Ct. 2407 (2022); *Tandom v. Newsom,* 141 S. Ct. 1294 (2021); *Fulton v. City of Philadelphia,* 141 S. Ct. 1868 (2021); *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n,* 138 S. Ct. 1719 (2018). However, where a law is neutral, generally applicable, and only incidentally burdens religious freedom, strict scrutiny does not apply. *Church of Lukumi Babalu Aye, Inc.,* 508 U.S. 520 (1993).

17. In *Roman Catholic Diocese of Brooklyn v. Cuomo*, the Roman Catholic Diocese of Brooklyn and two Orthodox Jewish synagogues sued to block enforcement of an executive order restricting capacity at worship services within certain zones, while certain secular businesses were permitted to remain open and subjected to different restrictions in those same zones. The religious organizations claimed that this order violated their First Amendment right to free exercise of religion.

Explain the U.S. Supreme Court's holding on whether the religious entity-applicants were entitled to a preliminary injunction.

Response: In *Roman Catholic Diocese of Brooklyn v. Cuomo,* 592 U.S. 14 (2020), a church and synagogue filed § 1983 actions alleging that the Governor's emergency Executive Order imposing occupancy restrictions on houses of worship during COVID-19 pandemic violated the Free Exercise Clause. The Supreme Court held that the applicants had clearly established their entitlement to injunctive relief pending appellate review. The Supreme Court found that the applicants were entitled to the injunction because they had shown that their First Amendment claims were likely to prevail, denying them relief would lead to irreparable injury, and granting relief would not harm the public interest. *Id.* The Supreme Court explained that there was a likelihood of success on the merits because the applicants had made a strong showing that the challenged restrictions violate "the minimum requirement of neutrality" to religion. *Id.* (quoting *Church of Lukumi Babalu Aye, Inc. v. Hialeah,* 508 U.S. 520 (1993)).

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

Response: Plaintiffs, who wished to gather for at-home religious exercise, brought an action alleging that the State's Blueprint System for restrictions on private gatherings during the COVID-19 pandemic violated their First Amendment rights to free exercise, free speech, and freedom of assembly and their Fourteenth Amendment substantive due process and equal protection rights. The plaintiffs filed a motion for an emergency injunction pending appeal. The United States Supreme Court found the plaintiffs were entitled to an emergency injunction pending appeal. The Supreme Court found that the applicants were likely to succeed on the merits of their free exercise claim; they were irreparably harmed by the loss of free exercise rights "for even minimal periods of time"; and the State had not shown that "public health would be imperiled" by employing less restrictive measures. *Tandon v. Newsom*¸593 U.S. 61 (2021) (quoting *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14 (2020)). The Supreme Court explained that government regulations that are not neutral and generally applicable trigger strict scrutiny under the Free Exercise Clause, whenever they treat any comparable secular activity more favorably than religious exercise. *Id*. The Supreme Court further explained that it is no answer that a State treats some comparable secular businesses or other activities as poorly as or even less favorably than the religious exercise at issue. *Id*.

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

Response: Yes. *See, e.g., Kennedy v. Bremerton School District*, 142 S. Ct. 2407 (2022).

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

Response: A cake shop and its owner refused to sell a wedding case to a same-sex couple due to his religious beliefs. The Colorado Civil Rights Commission issued a cease and desist order requiring the shop owner to not violate Colorado's Anti-Discrimination Act (CADA) by discriminating against potential customers based on sexual orientation. The United States Supreme Court held that the Commission did not comply with the Free Exercise Clause's requirement of religious neutrality. The Supreme Court found that the Commission's treatment of the owner violated the State's duty under the First Amendment not to base laws or regulations on hostility to a religion or religious viewpoint. The Supreme Court further found that the government, consistent with the Constitution's guarantee of free exercise, cannot impose regulations that are hostile to the religious beliefs of affected citizens and cannot act in a manner that passes judgment upon or presupposes the illegitimacy of religious beliefs and practices. (*citing Church of Lukumi Babalu Aye, Inc. v. Hialeah,* 508 U.S. 520.)

21. Under existing doctrine, are an individual's religious beliefs protected if they are contrary to the teaching of the faith tradition to which they belong?

Response: Religious beliefs are protected under the Free Exercise Clause and Religious Freedom Restoration Act as long as they are sincerely held. *See Frazee v. Illinois Dep't of Emp. Sec.,* 489 U.S. 829, 834 (1989). The beliefs do not need to be consistent with a particular faith tradition. *See id*. at 834 (1989) ("[W]e reject the notion that to claim the protection of the Free Exercise Clause, one must be responding to the commands of a particular religious organization."); *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 724 (2014) (stating that the court's role is limited to determining if a person's religious belief is an "honest conviction," not whether that belief is reasonable). *see also Thomas v. Review Bd. of Indiana Employment Security Div.,* 450 U.S. 707, 714 (1981) (holding that "religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection")

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

Response: The United States Supreme Court held that federal courts' "narrow function" is to "determine whether the plaintiffs' asserted religious belief reflects an honest conviction." *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 725 (2014).

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

Response: Please see my responses to Questions 21 and 21(a).

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

Response: I am unaware of the Catholic Church's official position regarding whether abortion is acceptable and morally righteous.

22. In *Our Lady of Guadalupe School v. Morrissey-Berru*, the U.S. Supreme Court reversed the Ninth Circuit and held that the First Amendment's Religion Clauses foreclose the adjudication of employment-discrimination claims for the Catholic school teachers in the case. Explain your understanding of the Court's holding and reasoning in the case.

Response: In *Our Lady of Guadalupe School v. Morrissey-Berru,* 140 S. Ct. 2049 (2020), the Supreme Court held that the ministerial exception, grounded in the First Amendment's Religion Clauses, barred the teacher's employment discrimination claims. The Supreme Court stated that the First Amendment protects the right of religious institutions "to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Id*. (citing *Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church in North America,* 344 U.S. 94 (1952)). The Supreme court stated independence of religious institutions in matters of "faith and doctrine" is closely linked to independence in "matters of church government." *Id*. Under the ministerial exception, courts are bound to stay out of employment disputes involving those holding certain important positions with churches and other religious institutions." *Id*. The Supreme Court explained in evaluating the ministerial exception it is important to look at "what an employee does" rather than simply look for the title of "minister." *Id*. The Supreme Court explained that when a school with a religious mission entrusts a teacher with the responsibility of educating and forming students in the faith, judicial intervention into disputes between the school and the teacher threatens the school's independence in a way that the First Amendment does not allow. The teachers in this case, due to their duties, fell within the ministerial exception and therefore foreclosed their employment discrimination claims brought against their religious organizations.

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

Response: In *Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2021), the City of Philadelphia declined to renew a contract with a foster care agency that refused to certify same-sex couples as foster parents based on the agency's religious views. The Supreme Court held that the City's decision violated the Free Exercise Clause of the First Amendment. The Supreme Court found that the City's action was subject to strict scrutiny because the City's non-discrimination requirement in its standard foster care contract was not "generally applicable," instead it incorporated a system of "individual exemptions." *Id*. at 1878. Analyzing the case under strict scrutiny, the Supreme Court held that the City offered "no compelling reason why it has a particular interest in denying an exception to [the religious entity] while making them available to others."

Id. at 1882.

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

Response: In *Carson v. Makin*, 142 S. Ct. 1987 (2022), the United States Supreme Court held that Maine's non-sectarian requirement for its tuition assistance program violated the Free Exercise Clause of the First Amendment because the program's "nonsectarian" requirement created a carve-out for religious schools. The Supreme Court explained that by paying for tuition for certain students at private schools, "so long as the schools are not religious," was "discriminat[ing] against religion." Applying strict scrutiny, the Court held that Maine's program did not survive because a "State's anti-establishment interest does not justify enactments that exclude some members of the community from an otherwise generally available public benefit because of their religious exercise."

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

Response: In *Kennedy v. Bremerton School District*, 142 S. Ct. 2407 (2022), the Supreme Court held that a school district violated the Free Exercise and Free Speech Clauses of the First Amendment when it fired a high school football coach for kneeling at midfield after games to offer a quiet prayer. The Supreme Court determined that the coach's prayer was unattributable to his duties as a coach and were protected by both the Free Exercise and Free Speech Clauses of the First Amendment, which protect the right of an individual to engage in religious observance without reprisal from the government.

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

Response: *Mast v. Fillmore County,* 141 S. Ct. 2430 (2021), involved a Free Exercise challenge by an Amish community against the application of an ordinance requiring the installation of certain modern septic systems to dispose of gray water. The Court vacated the order requiring the Amish community to comply with the ordinance in light of *Fulton v. City of Philadelphia.* Justice Gorsuch concurred. He noted that the Religious Land Use and Institutionalized Persons Act mandates strict scrutiny for government actions that burdens religion. In Justice Gorsuch concurrence, he stated that "*Fulton* makes clear that the County and courts below misapprehended RLUIPA's demands," which Justice Gorsuch explained "requires application of 'strict scrutiny.'". Justice Gorsuch elaborated on the standard, stating that courts cannot rely on "broadly formulated" government interests, but instead must "scrutinize [] the asserted harm of granting specific exemptions to particular religious claimants." *Id*. (alternation in

original) (quoting *Fulton*, 141 S. Ct. at 1881).

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

Response: As a Magistrate Judge and a judicial nominee, I am prohibited from expressing an opinion regarding matters that may come before the courts, including the constitutionality of federal courts. *See* Code of Conduct for United States Judges, Canon 3(A)(6). If confirmed, as I have done for the last 16 years, I would faithfully apply United States Supreme Court and Eighth Circuit precedent concerning the interpretation of 18 U.S.C. § 1507.

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

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

Response: No.

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

Response: No.

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

Response: No.

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

Response: No.

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

Response: Yes.

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

Response: Yes.

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

Response: Under the Appointments Clause of the Constitution, the President has the authority to make political appointments with the advice and consent of the Senate. As a Magistrate Judge and a judicial nominee, I am prohibited from expressing an opinion on what the President and Senate should consider in exercising their constitutional duties. If confirmed, as I have done for the last 16 years, I will faithfully apply Supreme Court and Eighth Circuit precedent.

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

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

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

Response: The question of whether the number of Supreme Court Justices should be increased or decreased is a policy issue for policymakers to consider. As a Magistrate Judge and judicial nominee, I am prohibited from expressing an opinion. If confirmed, as I have done as a judge for the last 16 years, I will faithfully apply Supreme Court and Eighth Circuit precedent.

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

Response: No.

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

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

36. What kinds of restrictions on the Right to Bear Arms do you understand to be prohibited by the U.S. Supreme Court's decisions in *United States v. Heller*,

***McDonald v. Chicago*, and *New York State Rifle & Pistol Association v. Bruen*?**

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

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

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

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

Response: No. The Supreme Court has explained that the constitutional right to bear arms "in public for self-defense is not a 'second-class right.'" *New York State Rifle and Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2156 (2022) (quoting McDonald v. Chicago, 561 U.S. 742, 780 (2010)).

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

Response: No. The Supreme Court has explained that the constitutional right to bear arms "in public for self-defense is not a 'second-class right.'" *New York State Rifle and Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2156 (2022) (quoting McDonald v. Chicago, 561 U.S. 742, 780 (2010)).

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

Response: The President has the executive power to enforce laws under Article II of the Constitution. The executive's discretion to execute the laws is "broad" but not "unfettered" as it is subject to "constitutional constraints." *Wayte v. United States*, 470 U.S. 598, 608 (1985). As a Magistrate Judge and a judicial nominee, I am prohibited

from expressing an opinion or commenting regarding how this discretion should be applied. If confirmed, as I have done as a judge for the last 16 years, I will faithfully apply Supreme Court and Eighth Circuit precedent.

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

Response: Generally, prosecutorial discretion refers to the power of a prosecutor to decide how to proceed with a case in terms of whom to charge, what charges to bring, and whether to engage in plea bargaining. A substantive administrative rule change would be governed by the Administrative Procedure Act, which establishes the procedures for such rule changes. 5 U.S.C. §§ 551-559.

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

Response: No. The federal death penalty is provided for by statute and the President does not have the authority to unilaterally change a federal statute.

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

Response: In *Alabama Association of Realtors v. Department of Health and Human Services*, 141 S. Ct. 2485 (2021), the Supreme Court vacated a nationwide eviction moratorium that was imposed by the Centers for Disease Control and Prevention (CDC) in response to the COVID-19 pandemic. The Supreme Court determined that petitioners had a substantial likelihood in success on the merits regarding their claim that the CDC exceeded its statutory authority by imposing the moratorium. Considering the applicable factors relevant to determining whether to continue the stay, the Supreme Court held, "It is up to Congress, not the CDC, to decide whether the public interest merits further action here." *Id*.

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

Response: As a Magistrate Judge and a judicial nominee for, I am prohibited from expressing an opinion on the propriety of prosecutorial announcements. *See* Code of Conduct for United States Judges, Canon 3(A)(6). If confirmed as I have done as a judge for the last 16 years, I will faithfully apply Supreme Court and Eighth Circuit precedent.

Senator John Kennedy
Questions for the Record

Susan Bazis

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 United States Supreme Court, Eighth 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 a Magistrate Judge for the last seven years, and a state court judge for almost ten years prior to being a magistrate judge, I have decided all cases that come before me based on the facts of the case and the applicable law. I have always tried to be fair and impartial. I am always prepared and review the statutes that are applicable, the constitution, and all Supreme Court and Eighth Circuit precedent on the issues. I then apply the law to the facts of the case in front of me and try to rule on the matter diligently and expeditiously. If confirmed as a District Judge, I will continue to abide by this philosophy and continue to be fully prepared for every hearing, make sure that all that come before me feel that they are heard, and fairly and impartially decide each matter as I have done for the last 16 years.

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

   Response: Yes. The United States Supreme Court has used this interpretive approach to resolve certain Constitutional matters. *See New York State Rifle & Pistol Association, Inc. v. Bruen,* 597 U.S. 1 (2022); *McDonald v. City of Chicago,* 561 U.S. 742 (2010);

District of Columbia v. Heller, 544 U.S. 570 (2008); *Crawford v. Washington,* 541 U.S. 36 (2004).

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: As a judge for the last 16 years, and if confirmed as a District Judge, if confronted with a constitutional question of first impression with no applicable precedents from either the United States Supreme Court or the Eighth Circuit, I would begin by examining the text of the Constitutional provision at issue. If the text of the provision is unambiguous, then I would apply its plain meaning. If the text of the provision is ambiguous, I would look to other methods of statutory interpretation including the decisions of other Circuits and District Courts, as well as the cannons of construction. If these additional sources do not provide sufficient guidance, I would look to legislative history of the provision at issue but only to the extent such analysis is permitted under the Supreme Court and Eight Circuit precedent.

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

   Response: Yes. *See Bostock v. Clayton County,* 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: See my response to Question 6.

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 meaning of the United States Constitution does not change over time. However, "the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated." *New York State Rifle & Pistol Association, Inc. v. Bruen,* 597 U.S. 1 (2022). *See e.g., United States v. Jones*, 565 U.S. 400, 404–405 (2012) (holding that installation of a tracking device was "a physical intrusion [that] would have been considered a 'search' within the meaning of the Fourth Amendment when it was adopted").

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* provides the historical background of writs of habeas corpus. The traditional understanding was that a judgment of conviction was "conclusive on all of the world." However, a habeas court could grant relief if the court

of conviction lacked jurisdiction over the defendant or his offense. A habeas court could only examine the power and authority of the court to act, not the correctness of its conclusions. However, in *Brown v. Allen*, 344 U.S. 443 (1953), the court held that a state-court judgment "is not res judicata" in federal habeas proceedings with respect to a petitioner's federal constitutional claims. *Brown* suggested, a federal district court approaching the same case years later should be free to decide de novo whether the state-court proceedings "resulted in a satisfactory conclusion" and to issue habeas relief if that conclusion is found wanting. This resulted in a significant increase the number of habeas petitions before the federal courts. The Court responded with devising new rules to use to determine which cases may be meritorious in the ever growing number of habeas petitions.

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, s*ets forth the reasons why the affirmative action programs at Harvard and the University of North Carolina violated the Equal Protection Clause of the Fourteenth Amendment. The Court held the schools needed to meet strict scrutiny for their race-based admission policies. The schools claimed educational interest in using race as a factor was not a compelling interest for purposes of satisfying strict scrutiny. Additionally, the policies were not narrowly tailored to achieve those ends.

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: Part III of *303 Creative LLC v. Elenis,* is a free speech case in which the United States Supreme Court held that the wedding websites the owner sought to create for her customers qualified as pure speech under the First Amendment. Therefore, the Court held that Colorado's public accommodation law would unconstitutionally compel speech if it required the website designer to create wedding websites for same-sex couples against her own religious beliefs.

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,* the United States Supreme Court undertook an extensive historical review of liberty rights under the Due Process Clause of the Fourteenth Amendment. Liberty interests must be deeply rooted in history and tradition. The Court found that abortion liberty was not deeply rooted in history or tradition and therefore the federal constitution did not provide a right to abortion, and the authority to regulate abortion must be returned to the people and their elected representatives.

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: In Part III of *Dobbs v. Jackson,* the United States Supreme Court analyzed the power of *stare decisis* had in determining whether the Supreme Court's prior holdings in *Roe v. Wade* and *Casey v. Planned Parenthood* should be upheld. The Court provided that in appropriate circumstance they must reconsider and, if necessary, overrule constitutional decisions. The Court in *Dobbs* used five factors to determine whether *stare decisis* should be used in applying prior Supreme Court precedent: the nature of the prior precedent's error; the quality of its reasoning; the "workability" of the rules the precedent created; its disruptive effect on other areas of the law; and the reliance interest in the prior precedent. After weighing each of these factors the Court held that "traditional stare decisis factors do not weigh in favor of retaining *Roe or Casey."*

15. 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. Corte* is a case involving a § 1983 an excessive force claim. This case involved the rule that an officer is entitled to qualified immunity if the officers conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. Based on the facts of this case there was no Supreme Court or Court of Appeals cases that put the officer on notice that his specific conduct was unlawful. Therefore, the officer was entitled to qualified immunity.

16. 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: The Supreme Court has recognized that "one of the 'principles of equity jurisprudence' is that 'the scope of injunctive relief is dictated by the extent of the violation established, not by the geographical extent of the plaintiff class.'" *Rodgers v. Bryant*, 942 F.3d 451, 458 (8th Cir. 2019) (quoting *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979)). Injunctive relief must be "no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs." *Nebraska v. Biden*, 52 F.4th 1044 (2022) (quoting *Madsen v. Women's Health Ctr., Inc*., 512 U.S. 753, 765 (1994)). The issue of a nationwide injunction was before the United States Supreme Court in *Trump v. Hawaii,* 138 S. Ct. 2392 (2018). However, based on the Court's ruling, it became unnecessary for it to consider the propriety of the nationwide scope of the injunction issued by the district court. Justice Thomas in a concurring opinion did address the issue of nationwide injunctions and indicated he was skeptical that district courts have the authority to enter nationwide injunctions.

17. 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.

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

Response: Dicta is not law and has no binding precedent in future cases. Therefore, it is important to distinguish between dicta and case holdings. I would ensure, as I have for the last 16 years, that my decisions are based on United States Supreme Court and Eighth Circuit holdings, and not dicta.

19. 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: I have been lead counsel in at least 43 cases in federal court. Almost all of them have been criminal matters, where I have handled numerous court hearings, motions, pleas and sentencings. On the civil matters, I was second chair but none of those matters went to trial. I have handled as lead counsel at least 150 trials in state court and have presided over 550 trials as a judge. Five of those trials have been in federal court.

20. 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.

21. 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: The only social-media account I have ever had is LinkedIn. I created an account in September 2009. I have never really used this account and forgot I had it until I reviewed my records in connection with applying to be a District Court Judge.

22. Why should Senator Kennedy support your nomination?

Response: I have the experience to be a District Court Judge. I have over 30 years of trial experience both as an attorney and a Judge in both civil and criminal matters. As an attorney I appeared in court almost every day. I have had at least 150 trials, both jury and non-jury trials. I have also handled hundreds of motions, both civil and criminal, and thousands of non-trial court hearings. I also prepared a Petition for Writ of Certiorari to the United States Supreme Court. As a judge for the last 16 years, I have handled at least 550 cases, both jury and non-jury, to verdict. As a state court judge my docket was evenly split between civil and criminal matters. I was a Judge in the highest volume court in the State of Nebraska. I was in the courtroom almost every day handling an average of 50 to 60 cases per day in court. As a magistrate judge I continue to have a

docket evenly divided between civil and criminal matters and I am in the courtroom almost every day. To get all of the work done I have a very strong work ethic and exceptional time management skills. As a judge for the last 16 years, I have treated all individuals that come before me fairly, impartially, and with respect. I also make sure that everyone has an opportunity to be heard. I have consistently received high marks from the attorneys in my area on my judicial performance evaluations. In addition, the American Bar Association's Standing Committee on the Federal Judiciary voted unanimously that I am "Well Qualified" to serve on the United States District Court for the District of Nebraska. I firmly believe this is due to my tremendous amount of experience and how I have conducted myself as a judge for the last 16 years.