Senator Richard J. Durbin
Chair, Senate Judiciary Committee
Written Questions for Melissa DuBose
Nominee to be United States District Court Judge for the District of Rhode Island
February 15, 2024

1. **During your confirmation hearing, you were asked about an interview you gave that was published in *Women's Studies Quarterly* nearly 25 years ago.**

Is there anything you would like to add to the responses you gave on this topic during your hearing?

Response. I worked as an educator in Providence, Rhode Island for over a decade before attending law school. In 2000, during my time as a teacher, I participated in an interview with a Brown University undergraduate student who was contemplating a career in teaching.

It was my understanding that the interview was part of a course assignment. I was never provided a copy of either a working or final draft, nor was I advised until February 7, 2024, that the student's description of the interview had been published in any forum. Prior to this date, I had never heard of the *Women's Study Quarterly* (the journal in which the student's writing appeared). After reviewing the article, I immediately supplemented my Senate Judiciary Questionnaire. If I had been aware of the publication, I would have included it in my initial responses to the Senate Judiciary Committee.

With respect to the content of the 2000 article, I observed that the undergraduate author included a passage about my study of political science and my interest in engaging with local high school students in conversations about their own classes, as well as discussions about political theory I had been reading at the time. According to the undergraduate student, I described myself as being in a "Marxist Phase," which I can only understand to refer to the specific political theory I happened to have been reading at the time. Though I cannot confirm the accuracy of the quote that appeared in the undergraduate's article as I participated in the interview nearly 25 years ago, I can affirm, as I did at my hearing, that I do not now nor have I ever identified as a Marxist or agreed with Marxist ideology. As I explained during my hearing, as a student of political theory, I immersed myself in scholarship of all kinds, reading Hobbes, Locke, Rousseau, Marx, the Tao Te Ching, the Analects of Confucius, and much, much more. I so enjoyed reading and discussing political theory that I later taught courses in both western and eastern philosophy.

Senator Lindsey Graham, Ranking Member
Questions for the Record
Judge Melissa R. DuBose
Nominee to be United States District Judge for the District of Rhode Island

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, list all countries of citizenship 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 (such as race or sex) when deciding whether to grant oral argument? If yes, please describe in which circumstances such consideration would be appropriate.**

   Response: No. That would be inappropriate.

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

   Response: No. That would be inappropriate.

5. **In an interview in *The Feminist Press* for the Fall-Winter edition of *Women's Studies Quarterly*, you were quoted as follows: "*The kids would come into the cafe all the time, and so I had this great—I've always worked with kids—I had this immediate kind of connection with the School One kids. And they would come their free periods, and it was kind of a loose school at that point, and they'd come in in the mornings and after school and we'd sit and we'd just talk. We'd talk about what they're doing, we'd talk about their classes, and I was in a Marxist phase. I was in like a real 'let's talk about issues' space in my life—loved having an audience and I liked to talk and, I don't know, there's [sic] was this organic connection*."**

   a. Please explain the circumstances of this interview.

   Response: I worked as an educator in Providence, Rhode Island for over a decade before attending law school. In 2000, during my time as a teacher, I participated in an interview with a Brown University undergraduate student who was contemplating a career in teaching.

It was my understanding that the interview was part of a course assignment. I was never provided a copy of either a working or final draft, nor was I advised until February 7, 2024, that the student's description of the interview had been published in any forum. Prior to this date, I had never heard of the *Women's Study Quarterly* (the journal in which the student's writing appeared). After reviewing the article, I immediately supplemented my Senate Judiciary Questionnaire. If I had been aware of the publication, I would have included it in my initial responses to the Senate Judiciary Committee.

With respect to the content of the 2000 article, I observed that the undergraduate author included a passage about my study of political science and my interest in engaging with local high school students in conversations about their own classes, as well as discussions about political theory I had been reading at the time. According to the undergraduate student, I described myself as being in a "Marxist Phase," which I can only understand to refer to the specific political theory I happened to have been reading at the time. Though I cannot confirm the accuracy of the quote that appeared in the undergraduate's article as I participated in the interview nearly 25 years ago, I can affirm, as I did at my hearing, that I do not now nor have I ever identified as a Marxist or agreed with Marxist ideology. As I explained during my hearing, as a student of political theory, I immersed myself in scholarship of all kinds, reading Hobbes, Locke, Rousseau, Marx, the Tao Te Ching, the Analects of Confucius, and much, much more. I so enjoyed reading and discussing political theory that I later taught courses in both western and eastern philosophy.

b. **How were you selected to participate in this interview?**

Response: Please see my response to 5a.

c. Was this quote accurate?

Response: Please see my response to 5a.

d. If the interviewer did not accurately quote your statement, what, specifically, did she misquote?

Response: Please see my answer to 5a.

e. What did you mean when you said "I was in a Marxist phase"?

Response: Please see my response to 5a.

6. Have you ever spoken positively about, promoted, or advocated the writings or teachings of Karl Marx, Peter Kropotkin, or any other Marxist or Anarchist writers?

Response: Never.

7. **Have you ever been a member of, or otherwise affiliated with, any organization or group that attempted to promote the theories of Karl Marx, Peter Kropotkin, or any other Marxist or Anarchist writers?**

   Response: Never.

8. **Have you ever:**

   a. **Practiced before a federal court?**

      Response: No. However, I am admitted to the U.S. District Court for the District of Rhode Island.

   b. **Presided over a jury trial?**

      Response: No. However, as a sitting state district court judge with a daily calendar, I estimate that I have rendered verdicts or civil judgments in 250-300 bench trials, and I have issued more than 1,000 decisions in both criminal and civil matters. To date, none of the decisions that I have issued have been reversed.

   c. **Participated in a jury trial as an attorney?**

      Response: Yes. I began my legal career as a Rhode Island Special Assistant Attorney General where I tried matters involving juvenile offenders who were charged with offenses that would be charged as felonies if committed by adults. Upon being assigned to the Superior Court Unit, I managed a daily calendar that included felony arraignments, violation hearings, bail hearings, bench trials, and jury trials.

9. **All judicial nominees receive a rating from the American Bar Association's Standing Committee on the Federal Judiciary. In a letter date February 5, 2024, a majority of the Standing Committee rated you "qualified", while a minority of the committee rated you "not qualified."**

   a. **Why do you believe you received a "not qualified" rating from a minority of the ABA standing committee?**

      Response: I am truly honored that the majority of the American Bar Association's Standing Committee agrees with the overwhelming consensus of my judicial colleagues, including every jurist serving on the U.S. District Court for the District of Rhode Island, that I am "qualified" to assume this most serious and honored position. With respect to the minority view, I do not have any knowledge as to how or why they've reached their conclusion. Any response would be pure speculation. I can say that, in my nearly 20-year legal career including my 5 years as a sitting judge, I have served in a wide range of roles that have prepared

me to take the U.S. District Court bench, if I am so fortunate to be confirmed. This includes working 4 years as a prosecutor, more than a decade as in-house counsel advising a Fortune Global 500 company on federal regulatory matters, and 5 years as a state court judge, where I have presided over 250-300 bench trials.

10. **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.

11. **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. Judicial officers must both faithfully and dispassionately apply the applicable law to the relevant and competent facts in each and every case. Personal value judgments play no role in the fair and just adjudication of a case and are antithetical to the foundational principle of "equal treatment under the law."

12. **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.

13. **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.

14. **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.

15. **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: The relevant law for custodial defendants seeking post-conviction relief is pursuant to 28 U.S.C. Section 2255, or in the case of custodial defendants convicted and sentenced under state law, 28 U.S.C. Section 2254.

    With respect to the former, the detainee must file a motion with the sentencing court prior to the expiration of the statute of limitations. This, generally speaking, is within one year of the judgment of conviction or one year from the discovery of new evidence or a newly articulated constitutional right. The motion may be predicated on constitutional grounds, the discovery of new evidence, or clear error, to name a few. Custodial defendants seeking relief pursuant to 28 U.S.C. Section 2254 must demonstrate, among other requirements, that they have fully exhausted all state remedies or that such remedy does not exist before federal jurisdiction may attach.

16. **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: *Students for Fair Admissions, Inc. v. University of North Carolina* and *Students for Fair Admissions Inc. v. President & Fellows of Harvard College* were a consolidated case argued before the U.S. Supreme Court. The Petitioner argued that the admissions policy as administered at both Harvard College and UNC was discriminatory with respect to Asian-American applicants. In applying the appropriate standard, strict scrutiny, the court held that race-based affirmative action policies violate the Equal Protection Clause of the 14th Amendment.

17. **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: No.

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

18. **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.

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

Response: No.

20. 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.

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

Response: Yes. *See, e.g., Students for Fair Admissions Inc. v. President & Fellows of Harvard College,* 600 U.S. 181 (2023).

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

Response: In its 6-3 decision, the Supreme Court held that Colorado's Anti-Discrimination Act which would prohibit a website designer from expressing her religious opposition to same-sex weddings is an unconstitutional infringement on her 1st Amendment right to free speech. Forcing a designer to create expressive designs that are antithetical to his or her belief constitutes unconstitutional compelled speech.

23. 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. Justice Jackson's opinion was both reiterated and reaffirmed in *303 Creative LLC v. Elenis,* 600 U.S. 570 (2023). As in *Barnette,* the Court held that it is impermissible for the government to compel speech or deploy coercive measures that would result in the same.

24. 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: Any analysis that seeks to determine whether a law that regulates speech is "content-based" or "content-neutral" would begin with an analysis of the text and application of both U.S. Supreme Court and First Circuit precedent. Relying on the precedent set in *Reed v. Town of Gilbert*, 576 U.S. 155 (2015), the initial query would look to the nature of the targeted speech. "Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed." *Id.* at 163. Factors to be considered include the purpose of the regulation, the target of the regulation, the impact of the regulation, and whether alternative least restrictive measures could achieve the stated goal.

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

Response: In *Counterman v. Colorado,* 600 U.S. 66, 72 (2023) the U.S. Supreme Court established that "[t]rue threats of violence, everyone agrees, lie outside the bounds of the First Amendment's protection. And a statement can count as such a threat based solely on its objective content." In *Virginia v. Black,* 123 S. Ct. 1536, 1548 (2003), a true threat is described as a "serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals." The analysis does not turn on whether the speaker intends to commit the threatened act but rather looks to whether a "speaker directs a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death." *Id.*

26. Under Supreme Court and First 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: According to U.S. Supreme Court and First Circuit precedent, questions of fact are clearly articulated in *U.S. Bank Nat. Ass'n ex rel. CWCapital Asset Mgmt. LLC v. Vill. at Lakeridge, LLC,* 138 S. Ct. 960, 966 (2018). The Supreme Court advises that "facts" address determinations of "who did what, when or where, how or why." *Id*., citing *Thompson v. Keohane*, 516 U.S. 99, 111 (1995). As further explained in *Guerrero-Lasprilla v. Barr,* 140 S. Ct. 1062 (2020), "We have often used the phrase 'mixed questions' in determining the proper standard for appellate review of a district, bankruptcy, or agency decision that applies a legal standard to underlying facts. The answer to the 'proper standard' question may turn on practical considerations, such as whether the question primarily 'require[s] courts to expound on the law, particularly by amplifying or elaborating on a broad legal standard' (often calling for review *de novo*), or rather 'immerse[s] courts in case-specific factual issues' (often calling for deferential review)." *Id.* at 1069.

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

Response: If I am so fortunate to be confirmed as U.S. District Judge for the District of Rhode Island, I will faithfully adhere to the sentencing guidelines as set forth in 18 U.S.C. 3553(a). While retribution, deterrence, incapacitation, and rehabilitation are all well-established principles governing the intended purpose of a sentencing framework, Congress has not established any one purpose as primary and thus if I am so fortunate to be confirmed, I would consider all four factors.

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

Response: As a sitting state court judge and nominee for the U.S. District Court for the District of Rhode Island, it is paramount that I avoid offering commentary that could cause one to question or lose faith in the impartiality of the court. If confirmed, I will faithfully apply both U.S. Supreme Court and First Circuit Court precedents to every issue that comes before me.

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

Response: Please see my response to Question 28.

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

Response: 18 U.S.C. 1507 criminalizes certain picketing and parading activities when those activities are done with "the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty, pickets or parades in or near a building housing a court of the United States, or in or near a building or residence occupied or used by such judge, juror, witness, or court officer."

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

Response: I am unaware of any U.S. Supreme Court or First Circuit precedent regarding the constitutionality of 18 U.S.C. § 1507. The constitutionality of a similar state statute was upheld in *Cox v. Louisiana*, 379 U.S. 536 (1965).

32. 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: In most instances, it would be improper for a judicial nominee to opine as to whether a Supreme Court decision was rightly or wrongly decided. In this instance, however, it is highly unlikely that the issue of de jure segregation will be relitigated, so offering an opinion here would not run afoul of the Judicial Canons. As such, it is my opinion that *Brown v. Board* was correctly decided.

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

Response: In most instances, it would be improper for a judicial nominee to opine as to whether a Supreme Court decision was rightly or wrongly decided. In this instance, however, it is highly unlikely that a prohibition on interracial marriage will be relitigated, so offering an opinion here would not run afoul of the Judicial Canons. As such, it is my opinion that *Loving* was correctly decided.

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

Response: As a sitting state court judge and nominee for the U.S. District Court, I am subject to the Code of Conduct for United States Judges, Canon 3A(6), and barred from offering an opinion on issues that may be subject to future litigation. As of the date of this writing, *Griswold v. Connecticut* is a binding U.S. Supreme Court precedent that I would faithfully apply.

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

Response: *Roe v. Wade* is not binding U.S. Supreme Court precedent as it was expressly overturned in *Dobbs v. Jackson Women's Health Organization*. If confirmed, I would faithfully apply *Dobbs*.

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

Response: *Casey* is not binding U.S. Supreme Court precedent as it was expressly overturned in *Dobbs v. Jackson Women's Health Organization*. If confirmed, I would faithfully apply *Dobbs*.

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

Response: As a sitting state court judge and nominee for the U.S. District Court, I am subject to the Code of Conduct for United States Judges, Canon 3A(6), and barred from offering an opinion on issues that may be subject to future litigation. As of the date of this writing, *Gonzales v. Carhart* is a binding U.S. Supreme Court precedent that I would faithfully apply.

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

Response: As a sitting state court judge and nominee for the U.S. District Court, I am subject to the Code of Conduct for United States Judges, Canon 3A(6), and barred from offering an opinion on issues that may be subject to future litigation. As of the date of this writing, *District of Columbia v. Heller* is a binding U.S. Supreme Court precedent that I would faithfully apply.

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

Response: As a sitting state court judge and nominee for the U.S. District Court, I am subject to the Code of Conduct for United States Judges, Canon 3A(6), and barred from offering an opinion on issues that may be subject to future litigation. As of the date of this writing, *McDonald v. City of Chicago* is a binding U.S. Supreme Court precedent that I would faithfully apply.

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

Response: As a sitting state court judge and nominee for the U.S. District Court, I am subject to the Code of Conduct for United States Judges, Canon 3A(6), and barred from offering an opinion on issues that may be subject to future litigation. As of the date of this writing, *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* is a binding U.S. Supreme Court precedent that I would faithfully apply.

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

Response: As a sitting state court judge and nominee for the U.S. District Court, I am subject to the Code of Conduct for United States Judges, Canon 3A(6), and barred from offering an opinion on issues that may be subject to future litigation. As of the date of this writing, *New York State Rifle & Pistol Association v. Bruen* is a binding U.S. Supreme Court precedent that I would faithfully apply.

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

Response: As a sitting state court judge and nominee for the U.S. District Court, I am subject to the Code of Conduct for United States Judges, Canon 3A(6), and barred from offering an opinion on issues that may be subject to future litigation. As of the date of this writing, *Dobbs v. Jackson Women's Health* is a binding U.S. Supreme Court precedent that I would faithfully apply.

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 sitting state court judge and nominee for the U.S. District Court, I am subject to the Code of Conduct for United States Judges, Canon 3A(6), and barred from offering an opinion on issues that may be subject to future litigation. As of the date of this writing, *Students for Fair Admissions, Inc. v. University of North Carolina* and *Students for Fair Admissions Inc. v. President & Fellows of Harvard College* are a binding U.S. Supreme Court precedent that I would faithfully apply.

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

Response: As a sitting state court judge and nominee for the U.S. District Court, I am subject to the Code of Conduct for United States Judges, Canon 3A(6), and barred from offering an opinion on issues that may be subject to future litigation. As of the date of this writing, *303 Creative LLC v. Elenis* is a binding U.S. Supreme Court precedent that I would faithfully apply.

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

Response: The applicable legal standard for evaluating the constitutionality of a regulatory or statutory provision that infringes on the Second Amendment is set forth in *New York State Rifle & Pistol Ass'n v. Bruen,* 142 S. Ct. 2111 (2022). In *Bruen,* the court instructs that "When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Id.* at 2129-2130.

34. 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.

35. 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.

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

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

Response: No.

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

Response: No.

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

Response: No.

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

Response: No.

37. **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.

38. 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.

39. Please describe the selection process that led to your nomination to be a United States District Judge, from beginning to end (including the circumstances that led to your nomination and the interviews in which you participated).

Response: On July 21, 2023, upon the announcement that Judge William Smith intended to assume senior status, I submitted my letter of interest to Senator Jack Reed and Senator Sheldon Whitehouse regarding a position on the U.S. District Court for the District of Rhode Island. On September 6, 2023, I met with members of Senator Reed's and Senator Whitehouse's staff. I had a subsequent meeting with Senator Reed and Senator Whitehouse on September 22, 2023. On November 1, 2023, I interviewed with attorneys

from the White House Counsel's Office. Since November 1, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On January 10, 2024, the President announced his intent to nominate me.

40. 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.

41. 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.

42. 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.

43. 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.

44. 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.

45. 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?

Response: No.

a. If yes,

1. **Who?**
2. **What advice did they give?**

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

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

Response: On November 1, 2023, I interviewed with attorneys from the White House Counsel's Office. Since November 1, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On January 10, 2024, the President announced his intent to nominate me.

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

Response: I received these questions on the evening of February 15, 2024. I conducted legal research, reviewed my files, and drafted my responses. I submitted my draft responses to the Office of Legal Policy at the Department of Justice on February 18, 2024 and received limited feedback. I then finalized and submitted my answers.

Senate Judiciary Committee
Nominations Hearing
February 8, 2024
Questions for the Record
Senator Amy Klobuchar

For Melissa DuBose, nominee to be U.S. District Judge for the District of Rhode Island

Since 2019, you have served as an Associate Judge on the Rhode Island District Court. During this time, you have presided over hundreds of bench trials on a diverse range of cases ranging from commercial disputes to criminal arraignments and misdemeanor trials.

- **How has your experience as a state trial court judge prepared you to serve as a federal district court judge?**

  Response: As a state district court judge handling civil and criminal matters, I have faithfully applied civil and criminal rules of procedure that mirror the federal rules in virtually every aspect. The oath of judicial adherence to the rule of law is precisely the same in state and federal court. As a state court judge, I have:
  - Presided over 100s of criminal and civil trials,
  - Rendered over 1,000 decisions and have never been reversed,
  - Applied the pretrial and post-trial Rules of Civil Procedure in analyzing and ruling on scores of substantive and procedural motions on the court's civil docket,
  - Applied the Rules of Evidence in hundreds of adversarial evidentiary hearings,
  - Effectively managed a busy civil and criminal courtroom,
  - Treated attorneys and litigants respectfully in every matter before me,
  - Written opinions in administrative appellate matters that came before the court.

  Additionally, as a state court judge, I have presided over numerous matters involving self-represented litigants and have done so with patience, empathy, clarity, and consistency. This has allowed me to fulfill my oath to promote and instill faith in our judicial system.

- **What steps have you taken to ensure that those who appear before you have confidence that the court reached a fair and just decision, regardless of the outcome?**

  Response: The steps that I have taken to ensure that both litigants and third-party observers of the judicial process have confidence that my decisions are fair and just include creating a courtroom climate that is one of respect and decorum. As an active listener, all litigants know that they will be fully heard. By being prepared and well-researched, I am able to explain relevant civil and criminal procedural and substantive law in plain language. In rendering a verdict, I take due care in articulating my findings of fact and my application of the law to those facts. Rendering decisions that are well-reasoned, consistent, and clear, instills confidence that parties will receive equal treatment under law.

Senator Jon Ossoff
Questions for the Record for Judge Melissa DuBose
February 8, 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: In analyzing a case that turned on the interpretation of the First Amendment, I would apply Supreme Court and First Circuit precedent. If no binding precedent resolves the matter, I would look to the text of the First Amendment. If the language is clear, the inquiry would conclude. If the plain language is unclear or ambiguous, I would deploy alternative methods of constitutional interpretation, including looking at context and structure, and the canons of construction.

> **a. In your view, why are First Amendment protections of freedom of speech, publication, assembly, and exercise of religion vital in our society?**
>
> Response: The First Amendment is enshrined in the Bill of Rights and represents one of the core principles on which the United States was founded. It ensures that individuals have the freedom to express themselves without fear of government censorship or retaliation. This includes the right to voice dissenting opinions, criticize government officials, advocate for change, and engage in peaceful protest. These liberties are fundamental to a free and flourishing democracy.

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: The Sixth Amendment guarantees the right to a fair trial, including the right to legal representation, providing public defense to indigent defendants, and helping to balance the power dynamic between the government and its citizens regardless of their financial means. Public defense allows indigent defendants access to legal expertise and advocacy, which promotes fair trials. As powerfully stated in *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963), "… reason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth."

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: Navigating the judicial system can be one of the most daunting and challenging experiences a litigant may face in their life. These challenges are heightened for litigants with limited English proficiency and are often present in interactions that comprise critical components of their civil or criminal proceedings, such as interactions with law enforcement, court clerks, and legal counsel. Litigants with limited English proficiency experience challenges from the moment they walk into the courthouse. These challenges continue throughout the duration of their case and can include delays due to the requesting of an interpreter for a language of lesser diffusion, not understanding the U.S. judicial system, and lacking access to counsel with the assistance of a language interpreter.

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

Response: Access to justice is built on the foundation that all litigants have access to the judicial system and are given the opportunity to be heard. Language access in courts plays a vital role in ensuring that no person is "deprived of life, liberty, or property" without due process. Language access ensures that litigants are able to communicate, be understood, and participate meaningfully in all aspects of the judicial process. Limited English proficient litigants cannot truly participate in a proceeding without being afforded the opportunity to meaningfully communicate with the court and understand what has transpired. Language access safeguards the limited English proficient litigants' due process rights and ensures that those who are not fluent in English are not excluded from the judicial process.

Senator Mike Lee
Questions for the Record
Melissa R. DuBose, Nominee for District Court Judge for the District of Rhode Island

1. How would you describe your judicial philosophy?

Response: My commitment to the U.S. Constitutional principle that all litigants are provided equal treatment under law guides my judicial philosophy. To that end, my judicial approach includes fidelity to the principle of stare decisis, judicial restraint, and a fair and just application of the facts to the law.

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

Response: In analyzing a case that turned on the interpretation of a federal statute, I would begin with the Supreme Court and First Circuit interpretation of the same and would apply any binding precedent to the case before me. If no binding precedent exists, I would look to the plain language of the statutory provision. If the language is clear, the inquiry would conclude. If the plain language is unclear or ambiguous, I would deploy alternative methods of statutory interpretation, including statutory context and structure, the canons of construction, and, if appropriate, legislative history.

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

Response: For cases that turned on the interpretation of a constitutional provision, I would look to the U.S. Supreme Court and First Circuit for binding precedent. If no binding precedent is responsive to the matter, I would look to the text of the constitutional provision. If the language is clear, the inquiry would conclude. If the plain language is unclear or ambiguous, I would deploy alternative methods of constitutional interpretation, including looking to context and structure, the canons of construction, and if appropriate, any relevant history.

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

Response: Both text and original meaning play critical roles in interpreting the Constitution. In its recent decision regarding the Second Amendment, the U.S. Supreme Court applied the original "public understanding" of that constitutional provision and held that "the public understanding of the right to keep and bear arms in both 1791 and 1868 was, for all relevant purposes, the same with respect to public carry." *New York State Rifle & Pistol Association v. Bruen,* 597 U.S. 1, 38 (2022).

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

Response: Please see my response to Question 2.

6. Does the "plain meaning" of a statute or constitutional provision refer to the public understanding of the relevant language at the time of enactment, or does the meaning change as social norms and linguistic conventions evolve?

Response: In *Bostock v. Clayton County,* the Supreme Court explained that "[t]his Court normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment." 140 S. Ct. 1731, 1738 (2020).

7. What are the constitutional requirements for standing?

Response: According to *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016), to establish standing, "plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision."

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

Response: The powers granted to Congress pursuant to Article 1 of the U.S. Constitution are enumerated powers. However, the Supreme Court recognized in *McCulloch v. Maryland*, 17 U.S. 316, 323-324 (1819) that "[e]ven without the aid of the general clause in the constitution, empowering congress to pass all necessary and proper laws for carrying its powers into execution, the grant of powers itself necessarily implies the grant of all usual and suitable means for the execution of the powers granted."

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

Response: According to the Supreme Court in *Nat. Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 570 (2012), "[t]he question of the constitutionality of action taken by Congress does not depend on recitals of the power which it undertakes to exercise."

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

Response: Yes. The rights include but are not limited to the right to privacy (*Griswold v. Connecticut*, 381 U.S. 479 (1965)), the right to interracial marriage (*Loving v. Virginia,* 388 U.S. 1 (1967)), and the right to educate your children (*Meyer v. Nebraska*, 262 U.S. 390 (1923)). If I am so fortunate to be confirmed to the U.S. District Court for the District of Rhode Island, I would fully and faithfully apply all Supreme Court and First Circuit precedent including *Washington v. Gluckberg*, 521 U.S. 702, 721 (1997) (holding that to be constitutionally protected, unenumerated rights must be "deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty") (internal quotations and citations omitted).

11. What rights are protected under substantive due process?

Response: Please see my response to question 10.

12. If you believe substantive due process protects some personal rights such as a right to contraceptives, but not economic rights such as those at stake in *Lochner* v. *New York*, on what basis do you distinguish these types of rights for constitutional purposes?

Response: If I am so fortunate to be confirmed to the U.S. District Court for the District of Rhode Island, I would fully and faithfully apply all Supreme Court and First Circuit precedent and not any personal beliefs that I may hold. The U.S. Supreme Court overruled *Lochner v. New York* in *West Coast Hotel Co. v. Parrish,* 300 U.S. 379 (1937). The U.S. Supreme Court has found that due process protects certain rights after applying the *Glucksberg* test. I will follow binding U.S. Supreme Court and First Circuit precedent.

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

Response: According to the Supreme Court in *United States v. Lopez*, 514 U.S. 549, 558-59 (1995), Congress may regulate under its commerce power: (1) "the use of the channels of interstate commerce," (2) "the instrumentalities of interstate commerce, or persons or things in interstate commerce," and (3) activities that "substantially affect interstate commerce."

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

Response: In determining whether a group qualifies as a suspect class for the purposes of strict scrutiny, the Supreme Court has looked to factors such as immutable traits and whether a group has been the target of historic discrimination. These classes include race, religion, national origin, and alienage. *See New Orleans v. Dukes*, 427 U.S. 297 (1976); *Graham v. Richardson*, 403 U.S. 365, 372 (1971).

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

Response: Checks and balances are vital to our constitutional democracy. A healthy system of checks and balances with separate but co-equal branches fosters accountability and transparency.

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

Response: If I am so fortunate to be confirmed and faced with this question, I would carefully consider the facts and apply the relevant and binding U.S. Supreme Court and First Circuit precedent. On the issue of separation of powers, the U.S. Supreme Court in *Youngstown Sheet & Tube v. Sawyer*, 343 U.S. 579, 587 (1952) noted that "[i]n the framework of our Constitution, the President's power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker. The Constitution limits his functions in the lawmaking process to the recommending

of laws he thinks wise and the vetoing of laws he thinks bad. And the Constitution is neither silent nor equivocal about who shall make laws which the President is to execute."

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

Response: It is important for litigants to appear before judges who are fair, open-minded, and impartial so litigants can feel both seen and heard. However, decisions must be rendered dispassionately and in strict adherence to the rule of law.

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

Response: This hypothetical poses an impossible tragic dilemma. Both scenarios offend concepts of fundamental justice and ordered liberty.

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: Respectfully, I am not familiar with the trend that is posed in this question.

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 review of a lower court's or an administrative body's factual or legal findings." It defines "judicial supremacy" as "the doctrine that interpretations of the Constitution by the federal judiciary in the exercise of judicial review, esp. U.S. Supreme Court interpretations, are binding on the coordinate branches of the federal government and the states."

21. Abraham Lincoln explained his refusal to honor the Dred Scott decision by asserting that "If the policy of the Government upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the Supreme Court . . . the people will have ceased to be their own rulers, having to that extent practically resigned their Government into the hands of that eminent tribunal." How do you think elected officials should balance their independent obligation to follow the Constitution with the need to respect duly rendered judicial decisions?

Response: As a nominee to the U.S. District Court for the District of Rhode Island, I will approach all judiciable cases or controversies involving elected officials by carefully examining the facts before me and applying the appropriate U.S. Supreme Court and First Circuit precedent. It's important to note that elected officials who take an oath of office are bound to follow the rule of law, including decisions of the federal judiciary.

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: As a sitting judicial officer and a nominee for the U.S. District Court for the District of Rhode Island, it is always important to remember that we are bound to a constitutionally prescribed lane.

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: If confirmed to the U.S District Court for the District of Rhode Island, I will faithfully apply binding U.S. Supreme Court and First Circuit precedent to the facts presented. Only the U.S. Supreme Court can overturn its own precedent. As a District Court Judge, I would be bound by all U.S. Supreme Court and First Circuit precedent and would not have the constitutional authority to revisit those decisions.

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.

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

Response: I am not familiar with the Biden Administration's definition of "equity," and I do not have a personal definition of equity. According to Merriam-Webster, equity is defined as "justice according to natural law or right, specifically; freedom from bias or favoritism."

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

Response: Please see my response to Question 25.

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

Respond: Please see my response to Question 25. It is important to note that the term "equity" is not referenced in the 14th Amendment.

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

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

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

Response: Please see my responses to 28 and 29.

31. What is the total number of jury trials you have participated in as an attorney or judge?

Response: I began my legal career as a Rhode Island Special Assistant Attorney where I tried matters involving juvenile offenders who were charged with offenses that would be charged as felonies if committed by adults. Upon being assigned to the Superior Court Unit, I managed a daily calendar that included felony arraignments, violation hearings, bail hearings, bench trials, and approximately a half dozen jury trials.

As a sitting state district court judge with a daily calendar, I estimate that I have rendered verdicts or civil judgments in 250-300 bench trials, and I have rendered more than 1,000 decisions and orders in both criminal and civil matters.

32. How do you define implicit bias? What is your minimum acceptable level of implicit bias that a juror can possess before they should be struck for cause, and how do you quantify implicit bias?

Respond: According to Merriam-Webster, implicit bias is defined as **"**a bias or prejudice that is present but not consciously held or recognized." If I am so honored to be confirmed to a seat on the U.S. District Court for the District of Rhode Island, I will faithfully apply all U.S. Supreme Court and First Circuit precedent with respect to jury selection. I would also adhere to the Federal Rules of Criminal and Civil Procedure and the Jury Selection and Service Act.

33. You serve on the Committee on Racial and Ethnic Fairness. Your committee mandated a training for all Judiciary personnel, which included a program on "implicit bias and its effect." Who did you select to perform this training, and what qualifications do they possess that give you confidence that their trainings are not equally tainted by an unperceived implicit bias?

Respond: I was appointed to the Committee on Racial and Ethnic Fairness by the Chief of the Rhode Island Supreme Court. By way of context, the committee is divided into three subcommittees: 1) training and education, 2) data collection, and 3) public engagement. I serve on the public engagement committee, which seeks to instill confidence in the courts by working with community partners in promoting civics education. The training and education subcommittee is responsible for judicial training. I was not involved in the training referenced in the question prompt.

34. An article written about your career motivations stated that you developed interest in the law in part because you wanted an opportunity to "create justice." What does it mean to create justice, and how would you go about creating justice as a federal judge? If the statute mandated that you impose a sentence that does not coincide with your idea of creating justice, would you follow the statute regardless?

Response: It is difficult without reference to the precise article to know the context of the phrase "create justice." I worked to have justice served when I was a Special Assistant Attorney General for the Rhode Island Office of the Attorney General where I tried matters involving juvenile offenders who were charged with offenses that would be charged as felonies if committed by adults. Upon being assigned to the Superior Court Unit, I managed a daily calendar that included felony arraignments, violation hearings, bail hearings, bench trials, and jury trials.

Now, I endeavor every day as a sitting judge to create a climate and culture in my courtroom where all parties are treated with respect, where their cases are fully heard, and where precedent is fully and faithfully applied. If I am so fortunate to be confirmed, I will continue to strictly adhere to the law in every phase of a civil or criminal proceeding including 18 U.S.C. Section 3553. I will impose a sentence mandated by law in every case that comes before me.

35. Do you require that lawyers say "court users" instead of defendant and plaintiff in your courtroom?

Response: No.

36. In an interview that you did not disclose to this Committee, you told a student that were "in a Marxist phase." This was not in response to a question asking about the political theories you had been studying, nor the requirements of a college class, your statement indicates that you may have viewed this "Marxist phase" the same as being a conscientious person. In full, your statement reads: "We'd talk about what they're doing, we'd talk about their classes, and I was in a Marxist phase. I was in like a real 'let's talk about the

issues' space in my life." When did this Marxist phase of your life end? Do you still seek opportunities to ask others what they are doing and "talk about the issues," and if so, do you consider those Marxist activities? Do you hold any other Marxist ideation to this day?

Response. I worked as an educator in Providence, Rhode Island for over a decade before attending law school. In 2000, during my time as a teacher, I participated in an interview with a Brown University undergraduate student who was contemplating a career in teaching.

It was my understanding that the interview was part of a course assignment. I was never provided a copy of either a working or final draft, nor was I advised until February 7, 2024, that the student's description of the interview had been published in any forum. Prior to this date, I had never heard of the *Women's Study Quarterly* (the journal in which the student's writing appeared). After reviewing the article, I immediately supplemented my Senate Judiciary Questionnaire. If I had been aware of the publication, I would have included it in my initial responses to the Senate Judiciary Committee.

With respect to the content of the 2000 article, I observed that the undergraduate author included a passage about my study of political science and my interest in engaging with local high school students in conversations about their own classes, as well as discussions about political theory I had been reading at the time. According to the undergraduate student, I described myself as being in a "Marxist Phase," which I can only understand to refer to the specific political theory I happened to have been reading at the time. Though I cannot confirm the accuracy of the quote that appeared in the undergraduate's article as I participated in the interview nearly 25 years ago, I can affirm, as I did at my hearing, that I do not now nor have I ever identified as a Marxist or agreed with Marxist ideology. As I explained during my hearing, as a student of political theory, I immersed myself in scholarship of all kinds, reading Hobbes, Locke, Rousseau, Marx, the Tao Te Ching, the Analects of Confucius, and much, much more. I so enjoyed reading and discussing political theory that I later taught courses in both western and eastern philosophy.

37. In last week's hearing, you ended your remarks to Senator Blackburn by saying "I am a proud Democrat." You have been an associate judge in Rhode Island since 2019, do you consider yourself a Democrat judge?

Response: No. I serve with honor, fidelity to law, and with great respect for all who rely on our courts for equal and unbiased treatment. During my hearing, my comment about being a "proud democrat" was in reference to my strong support for our democratic system of government, not in reference to being affiliated with any political party.

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Senator John Kennedy
Questions for the Record

Melissa DuBose

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

   Response: Yes. Pursuant to 18 U.S.C. §3591, a defendant may be sentenced to death for certain enumerated offenses. These offenses include but are not limited to the intentional killing of another or the infliction of serious injury resulting in the death of the victim. The U.S. Supreme Court upheld the death penalty as constitutional in *Gregg v. Georgia,* 428 U.S. 153 (1976).

2. **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.

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

   Response: Yes.

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

   Response: Yes.

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

   Response: My commitment to the U.S. Constitutional principle that all litigants are provided equal treatment under law guides my judicial philosophy. To that end, my judicial approach includes fidelity to the principle of stare decisis, judicial restraint, and a fair and just application of the facts to the law.

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

   Response: Yes. Originalism is a legitimate method of constitutional interpretation. According to Black's Law Dictionary (11th ed. 2019), originalism is "[t]he doctrine that words of a legal instrument are to be given the meanings they had when they were adopted; specif., 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."

   In its recent decision regarding the Second Amendment, for example, the U.S. Supreme Court applied the original "public understanding" of that constitutional provision and

held that "the public understanding of the right to keep and bear arms in both 1791 and 1868 was, for all relevant purposes, the same with respect to public carry." *New York State Rifle & Pistol Association v. Bruen,* 597 U.S. 1, 38 (2022). If I am fortunate to be confirmed, I would apply the method of interpretation mandated by the Supreme Court and First Circuit precedent.

7. **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: If I am so fortunate to be confirmed to a seat on the U.S. District Court for the District of Rhode Island, I would begin my analysis of a novel constitutional question with the plain text of the constitutional provision. If the plain language is unclear or ambiguous, I would deploy methods of interpretation, including looking to context and structure, the canons of construction, and, if appropriate, relevant history. For example, the U.S. Supreme Court recently interpreted the Establishment Clause by referring to historical practices and understanding. *See Kennedy v. Bremerton*, 142 S. Ct. 2407, 2428 (2022).

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

Response: Yes. Black's Law Dictionary (11th ed. 2019) defines "textualism" as "the doctrine that the words of a governing text are of paramount concern and that what they fairly convey in their context is what the text means." As the Supreme Court instructed in *Bostock v. Clayton County Georgia,* 140 S. Ct. 1731, 1738 (2020), the court, "normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment." In interpreting the meaning of "sex" in the context of a Title VII action, the court began its analysis with an "…[orientation] to the time of the statute's adoption… and beg[a]n by examining key statutory terms in turn before assessing their impact on the cases at hand and then confirming our work against this Court's precedents." *Id.* at 1739.

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

Response: A judge should generally constrain him or herself to the plain language of a statute or ordinance. Only when the language at issue is ambiguous or its ordinary meaning cannot be ascertained is the judge allowed to rely on alternative modes of statutory interpretation. For example, the Supreme Court has relied on statutory context in *N.L.R.B. v. SW Gen., Inc*., 580 U.S. 288, 299 (2017), canons of construction in *Barnhart v. Thomas*, 540 U.S. 20, 26-28 (2003), and legislative history in *United Steelworkers of America v. Weber*, 443 U.S. 193, 202 (1979).

10. **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 U.S. Constitution's meaning does not change over time absent formal amendment.

11. 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: Rule 65 of the Federal Rules of Civil Procedure governs injunctive relief. A party seeking relief under the rule must establish that, "he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *See Winter v. Natural Resources Defense Council, Inc.,*129 S. Ct. 365, 375 (2008). In *Brown v. Trustees of Boston University,* the First Circuit Court of Appeals instructs that "injunctive relief should "[b]e narrowly tailored to give only the relief to which the plaintiffs are entitled." 891 F. 2d 337, 361 (1989). I am not aware of any U.S. Supreme Court or First Circuit precedent establishing the legal basis for a nationwide injunction.

12. 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.

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

Response: The First Circuit has recognized in *McCoy v. Massachusetts Institute of Technology,* 950 F.2d 13, 19 (1991), that "federal appellate courts are bound by the Supreme Court's considered dicta almost as firmly as by the Court's outright holdings, particularly when . . . a dictum is of recent vintage and not enfeebled by any subsequent statement." The First Circuit's treatment of Supreme Court dicta turns on whether there are "earmarks of careful consideration." *Id.* (distinguishing treatment of considered dictum from treatment of obiter dictum).

14. You have been nominated to serve as a federal district judge. Unless a question indicates otherwise, please answer the following questions with only "yes" or "no":

a. Have you ever served as lead counsel in a federal bench trial?

b. **Have you ever served as lead counsel in a federal jury trial?**

c. **Have you ever attended a federal jury trial?**

d. **Have you ever attended a federal bench trial?**

e. **Have you ever conducted voir dire in federal court?**

f. **Have you ever filed a motion in federal court?**

g. **Have you ever raised an evidentiary objection in federal court?**

h. **Have you ever appeared in a federal district court?**

i. **Have you ever appeared in a federal appellate court?**

j. **Have you ever served as lead counsel in a state jury trial?**

k. **While serving as a state court judge, have you ever presided over a jury trial?**

Response: With respect to Questions 14 a-k, no. However, I have served as a state court judge since January 2019. In that role, I have presided over 250-300 criminal and civil trials and resolved hundreds of evidentiary issues applying Rhode Island Rules of Evidence (which largely mirror the Federal Rules of Evidence). I have issued more than 1,000 rulings as a state court judge, none of which have been reversed. In addition, before joining the bench, I practiced commercial and federal regulatory law as in-house counsel for a Fortune Global 500 company for more than a decade. Before that, as a Special Assistant Attorney General for the Rhode Island Office of the Attorney General, I prosecuted matters on behalf of the state, at trial, during arraignments, at bond hearings, at probation violations hearings, and at various other proceedings.

l. Have you ever been admitted to the bar of any federal court?

Response: Yes.

i. **Which federal courts have you been admitted to practice in?**

Response: U.S. District Court for the District of Rhode Island.

ii. **What year were you admitted to practice in those bars?**

Response: 2023.

iii. **Please explain in detail the circumstances that led you to seek admission to those bars and whether your decisions to do so were motivated in whole or in part by your potential nomination to serve as a federal district judge.**

Response: In 2023, the U.S. District Court for the District of Rhode Island by way of an executive order partnered with the State Court's Committee on Racial and Ethnic Fairness. U.S. District Court Chief Judge John McConnell

invited all members of the state committee to join the Federal Bar. I humbly accepted this admission.

m. Please estimate how many years of experience you have working as a practicing litigator.

Response: I practiced law for close to 15 years before joining the state bench. I served approximately four and half years as a Special Assistant Attorney General assigned to the criminal division. Thereafter, I practiced commercial and federal regulatory law as in-house counsel for a Fortune Global 500 company for more than a decade. I have been a presiding state court judge for close to five years, presiding over hundreds of civil and criminal trials.

15. When reviewing applications from persons seeking to serve as a law clerk in your chambers, what role if any would the race, sex, or religion of the applicants play in your consideration? Please describe in detail.

Response: In reviewing applications for a law clerk, race, sex, or religion will play no role. My criteria will include candidates with high ethical standards, intellectual curiosity, superb writing skills, strong legal reasoning, and humility.

16. Why should Senator Kennedy support your nomination?

Response: As a state district court judge handling civil and criminal matters, I have faithfully applied civil and criminal rules of procedure that mirror the federal rules in virtually every aspect. The oath of judicial adherence to the rule of law is precisely the same in state and federal court. As a state court judge, I have:

- Presided over 100s of criminal and civil trials,
- Issued over 1,000 decisions and have never been reversed,
- Applied the pretrial and post-trial Rules of Civil Procedure in analyzing and ruling on scores of substantive and procedural motions on the court's civil docket,
- Applied the Rules of Evidence in hundreds of adversarial evidentiary hearings,
- Effectively managed a busy civil and criminal courtroom,
- Treated attorneys and litigants respectfully in every matter before me,
- Written opinions in administrative appellate matters that came before the court.

Additionally, as a state court judge, I have presided over numerous matters involving self-represented litigants and have done so with patience, empathy, clarity, and consistency. This has allowed me to fulfill my oath to promote and instill faith in our judicial system.

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