Senator Lindsey Graham, Ranking Member
Questions for the Record
Judge Camela Theeler
Nominee to be United States District Judge for the District of South Dakota

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.

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.

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 interpreting the Constitution because the Constitution is a domestic document. However, I recognize that there have been certain situations where the United States Supreme Court considered international law in interpreting various provisions of the Constitution. *See District of Columbia v. Heller,* 554 U.S. 570 (2008), *Lawrence v. Texas*, 539 U.S. 558 (2003), *Roper v. Simmons*, 543 U.S. 551 (2005), *Printz v. United States*, 521 U.S. 898 (1997), *Knight v. Florida*, 528 U.S. 990 (1999), *Atkins v. Virginia*, 536 U.S. 304 (2002), *Grutter v. Bollinger*, 539 U.S. 306 (2003).

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 the statement. Decisions that judges make when interpreting the Constitution must be based on the language used in the Constitution, applicable law, and binding Supreme Court and Eighth Circuit precedent.

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 a judge's responsibility and obligation to follow applicable law and binding Supreme Court and Eighth Circuit precedent.

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: There are a number of different statutes that address how a prisoner can request relief from a sentence in federal court. 28 U.S.C. § 2255 addresses remedies for prisoners seeking relief from their sentences. If a prisoner believes that his or her sentence was imposed in violation of the Constitution or laws of the United States, or that

the court was without jurisdiction to impose such a sentence, or that the sentence was in excess of the maximum sentence allowed by law, or is otherwise subject to a collateral attack, the prisoner may move the court to vacate, set aside, or correct the sentence. 28 U.S.C. § 1291 allows for direct appeal of the district court's judgement. A prisoner can also file a petition for writ of habeas corpus under 28 U.S.C. §2241. There is also a mechanism for a prisoner to request compassionate release under 18 U.S.C. § 3582(c).

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: Students for Fair Admissions, Inc. sued the University of North Carolina and Harvard College for using race as a factor considered in the admissions process. The colleges claimed that while race had been considered as one of the factors in admissions, their processes adhered to the requirements for race-based admissions under then applicable Supreme Court precedent. The Supreme Court held that the colleges' admissions processes violated Title VI of the Civil Rights Act of 1964 and the Equal Protection Clause of the Fourteenth Amendment. The Supreme Court explained that the colleges had not demonstrated a meaningful connection between the means and goals of achieving educational diversity, that they had failed to avoid racial stereotypes, and did not offer a logical endpoint for when race-based admissions would cease. The Supreme Court noted that universities are not prohibited from considering an applicant's discussion of how race may have affected an applicant's life, as long as the discussion is tied to a quality of the applicant's character or a unique ability the applicant could contribute to the college. *See Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181 (2023).

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?**

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

    Response: Yes, when I was an attorney at Lynn, Jackson, Shultz & Lebrun, P.C., I assisted in hiring summer interns. When I was an Assistant United States Attorney, I assisted in hiring a legal assistant for the Civil Division.

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 Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181 (2023); *Kohlbek v. City of Omaha, Neb.*, 447 F.3d 552 (8th Cir. 2006).

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

    Response: In this case, a website designer sought to enjoin the Colorado Civil Rights Commission and Colorado Attorney General from forcing her to create wedding websites that were inconsistent with her belief that marriage should be reserved to unions between a man and woman. The Supreme Court held that the First Amendment prohibited Colorado from compelling the website designer to create designs that conveyed messages with which the designer disagreed. *See 303 Creative, LLC v. Elenis*, 600 U.S. 570 (2023).

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. *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943) has not been overturned and is still good law. The Supreme Court recently cited *Barnette* in *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023).

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: Content-based laws regulate speech based on the substance or message and are subject to strict scrutiny analysis to determine if the content is narrowly tailored to serve compelling state interests. Content-neutral laws regulate the time, place, and manner of speech rather than the content. Content-neutral laws, even if facially neutral, can also be subject to strict scrutiny if they cannot be justified without reference to the content of the regulated speech, or if there is disagreement with the message the speech conveys. *See Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 156 (2015) ("A court must evaluate each question—whether a law is content based on its face and whether the purpose and justification for the law are content based—before concluding that a law is content neutral."). In analyzing whether a law is content-based or content-neutral, I would consider whether the law distinguishes favored speech from disfavored speech because of the message it conveys, whether a law, on its face, imposes burdens or confers benefits without reference to the content of the speech, and if the purpose of the law is to regulate speech because of its message. *See Turner Broad. Sys., Inc. v. F.C.C.*, 512 U.S. 622, 643-44 (1994).

20. **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, 69 (2023), the Supreme Court held that in a criminal action regarding a true threat the First Amendment requires proof that the defendant had some subjective understanding of the threatening nature of his statements. The Supreme Court held that a mental state of recklessness was sufficient and that "The State must show that the defendant consciously disregarded a substantial risk that his communications would be viewed as threatening violence. The State need not prove any more demanding form of subjective intent to threaten another." *Id*.

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: Questions of fact pertain to the circumstances surrounding a case. *See Glaze v. Byrd*, 721 F.3d 528, 532 (8th Cir. 2013) (where a district court considered "whether the evidence could support a finding that particular conduct occurred"). While questions of law relate to the interpretation and application of legal principles. *See Ortiz v. Jordan*, 562 U.S. 180, 190 (2011) (stating that purely legal issues typically involve disputes about the substance and clarity of pre-existing law when the facts are undisputed). In *United States v. McKines*, 933 F.2d 1412, 1419 (8th Cir. 1991), the Supreme Court "noted the vexing nature of the distinction between questions of fact and questions of law." *Id*. citing

Pullman–Standard v. Swint, 456 U.S. 273, 288, (1982) and *Accord Cooter & Gell v. Hartmarx Corp.,* 496 U.S. 384 (1990).

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

Response: 18 U.S.C. 3553(a) provides the sentencing factors to be considered in making sentencing decisions. There is no indication that any factor should be weighed more heavily than the others. If I were so honored to receive an appointment to the federal district court bench, I would faithfully apply the factors set forth in 18 U.S.C. § 3553(a), the United States Sentencing Guidelines, and any United States Supreme Court, and Eighth Circuit precedent before imposing a sentence.

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 state court judge and judicial nominee, I am generally precluded from commenting on whether any particular Supreme Court decision was correctly decided under Canon 3(A)(6) of the Code of Conduct for United States Judges. If confirmed, I would faithfully follow binding Supreme Court and Eighth Circuit precedent.

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

Response: As a state court judge and judicial nominee, I am generally precluded from commenting on whether any particular Eighth Circuit decision was correctly decided under Canon 3(A)(6) of the Code of Conduct for United States Judges. If confirmed, I would faithfully follow binding Supreme Court and Eighth Circuit precedent.

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

Response: 18 U.S.C. § 1507 prohibits picketing or parading in or near a court or near a building or residence occupied by a judge, juror, witness, or court officer for "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."

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

Response: As a state court judge and judicial nominee, I am generally precluded from commenting on the constitutionality of a statue under Canon 3(A)(6) of the Code of Conduct for United States Judges. If confirmed, I would faithfully apply Supreme Court and Eighth Circuit precedent. *See Cox v. State of Louisiana*, 379 U.S. 559 (1965) (upholding a Louisiana statute modeled after 18 U.S.C. § 1507).

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 state court judge and judicial nominee, I am generally precluded from commenting on whether any particular Supreme Court decision was correctly decided under Canon 3(A)(6) of the Code of Conduct for United States Judges. If confirmed, I would faithfully follow and apply *Brown v. Board of Education*. Consistent with other judicial nominees' responses to Questions for the Record, I believe the constitutionality of *de jure* segregation is sufficiently well-settled and therefore I can state that *Brown v. Board of Education* was correctly decided.

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

Response: As a state court judge and judicial nominee, I am generally precluded from commenting on whether any particular Supreme Court decision was correctly decided under Canon 3(A)(6) of the Code of Conduct for United States Judges. If confirmed, I would faithfully follow and apply *Loving v. Virginia*. Consistent with other judicial nominees' responses to Questions for the Record, I believe the constitutionality of laws prohibiting interracial marriage is sufficiently well-settled and therefore I can state that *Loving v. Virginia* was correctly decided.

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

Response: As a state court judge and judicial nominee, I am generally precluded from commenting on whether any particular Supreme Court decision was correctly decided under Canon 3(A)(6) of the Code of Conduct for United States Judges. If confirmed, I would faithfully follow and apply *Griswold v. Connecticut*.

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

Response: As a state court judge and judicial nominee, I am generally precluded from commenting on whether any particular Supreme Court decision was correctly decided under Canon 3(A)(6) of the Code of Conduct for United States Judges. The Supreme Court overturned *Roe v. Wade* and *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022), is now binding precedent. If confirmed, I would faithfully follow and apply *Dobbs v. Jackson Women's Health Organization.*

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

Response: As a state court judge judicial nominee, I am generally precluded from commenting on whether any particular Supreme Court decision was correctly decided under Canon 3(A)(6) of the Code of Conduct for United States Judges. The Supreme Court overturned *Planned Parenthood v. Casey* and *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022), is now binding precedent. If confirmed, I would faithfully follow and apply *Dobbs v. Jackson Women's Health Organization.*

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

Response: As a state court judge and judicial nominee, I am generally precluded from commenting on whether any particular Supreme Court decision was correctly decided under Canon 3(A)(6) of the Code of Conduct for United States Judges. If confirmed, I would faithfully follow and apply *Gonzales v. Carhart*.

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

Response: As a state court judge and judicial nominee, I am generally precluded from commenting on whether any particular Supreme Court decision was correctly decided under Canon 3(A)(6) of the Code of Conduct for United States Judges. If confirmed, I would faithfully follow and apply *District of Columbia v. Heller*.

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

Response: As a state court judge and judicial nominee, I am generally precluded from commenting on whether any particular Supreme Court decision was correctly decided under Canon 3(A)(6) of the Code of Conduct for United States Judges. If confirmed, I would faithfully follow and apply *McDonald v. City of Chicago*.

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

Response: As a state court judge and judicial nominee, I am generally precluded from commenting on whether any particular Supreme Court decision was correctly decided under Canon 3(A)(6) of the Code of Conduct for United States Judges. If confirmed, I would faithfully follow and apply *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*.

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

Response: As a state court judge and judicial nominee, I am generally precluded from commenting on whether any particular Supreme Court decision was correctly decided under Canon 3(A)(6) of the Code of Conduct for United States

Judges. If confirmed, I would faithfully follow and apply *New York State Rifle & Pistol Association v. Bruen*.

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

Response: As a state court judge and judicial nominee, I am generally precluded from commenting on whether any particular Supreme Court decision was correctly decided under Canon 3(A)(6) of the Code of Conduct for United States Judges. If confirmed, I would faithfully follow and apply *Dobbs v. Jackson Women's Health*.

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 state court judge and judicial nominee, I am generally precluded from commenting on whether any particular Supreme Court decision was correctly decided under Canon 3(A)(6) of the Code of Conduct for United States Judges. If confirmed, I would faithfully follow and apply *Students for Fair Admissions, Inc. v. University of North Carolina* and *Students for Fair Admissions Inc. v. President & Fellows of Harvard College.*

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

Response: As a state court judge and judicial nominee, I am generally precluded from commenting on whether any particular Supreme Court decision was correctly decided under Canon 3(A)(6) of the Code of Conduct for United States Judges. If confirmed, I would faithfully follow and apply *303 Creative LLC v. Elenis.*

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

Response: I would apply the legal standard set forth in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022), which analyzed whether the government met its burden of showing that a challenged regulation or statute is consistent with United States' history and tradition.

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: On December 8, 2023, I submitted a resume to Senator John Thune's office regarding a position on the United States District Court for the District of South Dakota. On December 18, 2023, I interviewed with attorneys from the Office of the White House Counsel. Since December 21, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice and the Office of White House Counsel. On January 4, 2024, I met with Senator Michael Rounds. On February 7, 2024, the President announced his intent to nominate me.

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?**

    Response: I decided which cases would be listed on my committee questionnaire. I tried to include a variety of cases that would demonstrate the broad experience I have both as an attorney and state court judge. I made some changes to my cases as I finalized the questionnaire because I wanted to include cases that were recent in time and had reached their conclusion.

    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?**

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

    Response: See Response to Question 34.

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

    Response: On March 13, 2024, I received the Questions for the Record from the Office of Legal Policy (OLP) at the Department of Justice. I reviewed the questions, conducted legal research, and prepared my responses. I submitted my draft responses to OLP and they provided limited feedback. I then finalized my answers and submitted them to OLP.

Senate Judiciary Committee
Nominations Hearing
March 6, 2024
Questions for the Record
Senator Amy Klobuchar

Camela C. Theeler, to be United States District Court Judge for the District of South Dakota

Since 2018, you have served as a state court judge in South Dakota, where you have presided over 57 criminal or civil trials that have gone to verdict or judgment. You have also issued hundreds of orders, decisions, opinions, and memorandum orders.

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

  Response: My position as a state court judge over the last six years has given me the chance to develop my judicial philosophy and demeanor. I believe it is important for a judge to be prepared, open-minded, patient, respectful, and to approach each case individually. It is a judge's obligation and responsibility to be impartial and fair and to make well-reasoned decisions based on applicable law and Supreme Court and Circuit precedent.

  Of the trials I have presided over, 27 have been criminal jury trials to completion and 6 have been civil jury trials to completion. I believe that experience will be beneficial on the federal bench if I am so honored to receive the appointment. The trials have given me the opportunity to become comfortable with conducting jury selection and ruling on evidentiary issues. I have applied our South Dakota Rules of Evidence which mirror the Federal Rules of Evidence applied in federal district court. Many of our sentencing considerations in South Dakota state court are similar to the federal sentencing factors set forth in 18 U.S.C. § 3553(a).

- **What are some of the most valuable lessons that you have learned while serving on the bench?**

  Response: I have learned that there is no substitute for preparation. Also, a judge is often confronted with conflicting arguments and authority in situations where emotions are running high. It is important to take the time needed to make thoughtful, well-reasoned decisions grounded in the law and applicable precedent. It is also important for judges to control the courtroom, give the parties clear expectations about the proceedings, make sure parties understand they will have the opportunity to be heard, and make sure there is a good record. When ruling on issues, I try to make sure the ruling is clear, concise, and understood by all parties. Finally, unexpected things happen in the courtroom, regardless of a judge's level of preparation. The parties take their cues from the judge in those situations, and it is important remain calm, assess the situation, and ensure the proceedings are fair and impartial to all parties.

Senator Mike Lee
Questions for the Record
Camela Catherine Theeler, Nominee for District Court Judge for the District of South Dakota

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

   Response: My position as a state court judge over the last six years has given me the chance to develop my judicial philosophy and demeanor. I believe it is important for a judge to be prepared, open-minded, patient, respectful, and to approach each case individually. It is a judge's obligation and responsibility to be impartial and fair and to make well-reasoned decisions based on applicable law and Supreme Court and Circuit precedent.

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

   Response: I approach constitutional and statutory interpretation by first looking to any binding Supreme Court and Eighth Circuit precedent that may be applicable to the matter before me. If the binding precedent does not resolve the matter, I move to examining the language of the constitutional provision or statute. If the language is unambiguous, then the analysis stops, and I apply the facts of the case to the appropriate constitutional or statutory provision. If the language is ambiguous, I would consider additional Supreme Court and Eighth Circuit precedent such as decisions interpreting similar constitutional or statutory provisions as well as decisions from other federal circuit courts interpreting the provision at issue in the case. I may also consider the meaning of the language at the time the provision was drafted, other analogous statutes that applied similar language, the judicial canons of construction, and legislative history to the extent allowed by 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: See answer to Question 2 above.

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

   Response: See answer to Question 2 above.

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

   Response: See answer to Question 2 above.

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

Response: The plain meaning of the Constitution does not change over time. *See District of Columbia v. Heller*, 554 U.S. 570, 625 (2008). However, the Supreme Court has acknowledged that "the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated, even though its meaning is fixed according to the understandings of those who ratified it." *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 3 (2022).

7. What are the constitutional requirements for standing?

Response: Article III standing requires that (1) a plaintiff must show that he or she suffered a concrete and particularized injury, (2) that is traceable to the allegedly unlawful conduct of the opposing party, and (3) that is redressable by a favorable judicial decision. *See United States v. Texas*, 599 U.S. 670, 675-76 (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 sets forth Congress's limited, enumerated powers. The Necessary and Proper Clause, found in Article I, Section 8, Clause 18 of the Constitution, empowers Congress to make laws that are "necessary and proper" for executing 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: See answer to Question 2 above. *See Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 570 (2012) (stating that the "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: In *Washington v. Glucksburg*, 521 U.S. 702 (1997), the Supreme Court noted that, in addition to the specific freedoms protected by the Bill of Rights, there are other liberties protected by the Due Process Clause, including the rights to marry, *Loving v. Virginia,* 388 U.S. 1 (1967); to have children, *Skinner v. Oklahoma ex rel. Williamson,* 316 U.S. 535 (1942); to direct the education and upbringing of one's children, *Meyer v. Nebraska,* 262 U.S. 390, (1923); *Pierce v. Society of Sisters,* 268 U.S. 510 (1925); to marital privacy, *Griswold v. Connecticut,* 381 U.S. 479 (1965); and to use contraception, *Eisenstadt v. Baird,* 405 U.S. 438 (1972), among other rights. In *Glucksburg*, the Supreme Court held there was not a constitutional right to

assisted suicide, as it was not "so rooted in the traditions and conscience of our people as to be ranked as fundamental," and because it was not "implicit in the concept of ordered liberty," such that "neither liberty nor justice would exist if they were sacrificed," *Glucksburg*, 521 U.S. at 721.

11. What rights are protected under substantive due process?

Response: Substantive due process is the principle that the Fifth and Fourteenth Amendments protect fundamental rights from government interference. Specifically, the Fifth and Fourteenth Amendments prohibit the government from depriving any person of life, liberty, or property without due process of law.

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 were so honored to be confirmed as a federal district court judge, I would faithfully apply applicable law and binding Supreme Court and Eighth Circuit precedent regarding substantive due process. It is my understanding that *Lochner v. New York*, 198 U.S. 45 (1905) has been overruled by *West Coast Hotel v. Parrish*, 300 U.S. 379 (1937).

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

Response: While Congress has significant regulatory power under the Commerce Clause to regulate interstate commerce, there are some limitations. Congress only has the power to regulate the channels of commerce, the instrumentalities of commerce, and action that substantially affects interstate commerce. *See United States v. Lopez*, 514 U.S. 549 (1995).

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

Response: A "suspect class" is a class of individuals marked by immutable characteristics such as race, religion, alienage, and national origin, that are entitled to equal protection of the law under strict scrutiny. *See San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 28 (1973) (indicating traditional indications of suspect class are a class that is saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process).

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

Response: The Constitution was designed to balance the power in our government between three separate branches. Each branch has unique functions, and each branch interacts with the others in a system of checks and balances. These concepts are designed to keep any single branch from having too much power.

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 were so honored to be confirmed as a federal district court judge, I would review the facts of each individual case and faithfully apply applicable law and binding Supreme Court and Eighth Circuit precedent.

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

Response: A judge's personal feelings and views must not be taken into consideration when applying the law. It is a judge's responsibility and obligation to apply applicable law and binding Supreme Court and Eighth Circuit precedent.

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

Response: Both situations are considered violations of the rule of law.

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

Response: As a state court judge and judicial nominee, I am generally precluded from commenting on why the Supreme Court may have taken any action. If I were so honored to be confirmed as a federal district court judge, I would faithfully apply applicable law and binding Supreme Court and Eighth Circuit precedent.

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

Response: Black's Law Dictionary defines "judicial review" as "(1) A court's power to review the actions of other branches or levels of government; especially the courts' power to invalidate legislative and executive actions as being unconstitutional. (2) The constitutional doctrine providing for this power. (3) A court's review of a lower court's or an administrative body's factual or legal findings."

Black's Law Dictionary defines "judicial supremacy" as "The doctrine that interpretations of the Constitution by the federal judiciary in the exercise of judicial

review, especially U.S. Supreme Court interpretations, are binding on the coordinate branches of the federal government and the states. The doctrine usually applies to judicial determinations that some legislation or other action is unconstitutional. Proponents of judicial supremacy frequently acknowledge that, when the courts determine that some action is constitutional, nonjudicial actors may legitimately act on their contrary judgment that the action is unconstitutional."

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: Under Article VI, Clause 3 of the Constitution, both federal and state officers are required to take an oath pledging to uphold the Constitution as the supreme law of the land. As a state court judge and judicial nominee, I am generally precluded from commenting on how elected officials should balance any competing interests they may face.

22. In Federalist 78, Hamilton says that the courts are the least dangerous branch because they have neither force nor will, but only judgment. Explain why that's important to keep in mind when judging.

Response: An Article III Court is a court of limited jurisdiction. It is a federal district court judge's obligation and responsibility to be impartial and fair and to make well-reasoned decisions based on applicable law and Supreme Court and Circuit precedent. A judge has no role in creating or enforcing the laws, as those are the responsibilities of other branches of government.

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: In *Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122 (2023), the Supreme Court held that "If a precedent of this Court has direct application in a case . . . " a lower court "should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions." *Id*. quoting *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477 (1989). "This is true even if the lower court thinks the precedent is in tension with 'some other line of decisions.'" *Id*.

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. 18 U.S.C. 3553(a) provides the sentencing factors to be considered in making sentencing decisions. If I were so honored to receive an appointment to the federal district court bench, I would faithfully apply the factors set forth in 18 U.S.C. § 3553(a), the United States Sentencing Guidelines, and any United States Supreme Court and Eighth Circuit precedent before imposing a sentence.

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

Response: Black's Law Dictionary defines "equity" as "Fairness; impartiality; evenhanded dealing" or "The body of principles constituting what is fair and right." If I were so honored to receive an appointment to the federal bench and presided over a case addressing this issue I would fairly and impartially apply the facts of the case to applicable law and binding Supreme Court and Eighth Circuit precedent.

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 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: See response to Question 25 above. I am not familiar with the context of the statement from the Biden Administration on "equity." If I were so honored to receive an appointment to the federal bench and presided over a case addressing this issue I would fairly and impartially apply the facts of the case to applicable law and binding Supreme Court and Eighth Circuit precedent.

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

Response: 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: Encyclopedia Britannica defines critical race theory as an "intellectual and social movement and loosely organized framework of legal analysis based on the premise that race is not a natural, biologically grounded feature of physically distinct subgroups of human beings but a socially constructed (culturally invested) category that is used to oppress and exploit people of colour."

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

Response: See responses to Questions 28 and 29 above. In my 17 years of legal practice and 6 years as a state court judge, I have not addressed any issues related to critical race theory or systemic racism.

Senator John Kennedy
Questions for the Record

Camela C. Theeler

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

   Response: Yes. In *Gregg v. Georgia*, 428 U.S. 153 (1976), the Supreme Court held that the death penalty is constitutional under the Eighth and Fourteenth Amendments. The United States Code addresses the crimes punishable by death and the procedures to be followed in those cases in 18 U.S.C. §§ 3591-3593.

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, including your approach to constitutional and statutory interpretation. Be as specific as possible.**

   Response: My position as a state court judge over the last six years has given me the chance to develop my judicial philosophy and demeanor. I believe it is important for a judge to be prepared, open-minded, patient, respectful, and to approach each case individually. It is a judge's obligation and responsibility to be impartial and fair and to make well-reasoned decisions based on applicable law and Supreme Court and Eighth Circuit precedent.

   I approach constitutional and statutory interpretation by first looking to any binding Supreme Court and Eighth Circuit precedent that may be applicable to the matter before me. If the binding precedent does not resolve the matter, I move to examining the language of the constitutional provision or statute. If the language is unambiguous, then the analysis stops, and I apply the facts of the case to the appropriate constitutional or statutory provision. If the language is ambiguous, I would consider additional Supreme Court and Eighth Circuit precedent such as decisions interpreting similar constitutional or statutory provisions as well as decisions from other federal circuit courts interpreting the provision at issue in the case. I may also consider the meaning of the language at the time the provision was drafted, other analogous statutes that applied similar language, the

judicial canons of construction, and legislative history to the extent allowed by Supreme Court and Eighth Circuit precedent.

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

   Response: Originalism is a legitimate method of constitutional interpretation. The Supreme Court has applied originalism in certain cases. *See New York State Rifle & Pistol Ass'n, 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).

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: I would approach a constitutional question of first impression by first examining the language of the constitutional provision. If the language is unambiguous, then the analysis stops, and I apply the facts of the case to the appropriate constitutional provision. If the language is ambiguous, I would consider any Supreme Court and Circuit precedent that may provide guidance in interpreting the provision in question. If the interpretation was still unclear, I would consider other canons of construction. Finally, I would consider legislative history to the extent that analysis is permitted by Supreme Court and Circuit precedent.

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

   Response: Textualism is a legitimate method of statutory interpretation. The Supreme Court applied textualism in *Bostock v. Clayton County*, 590 U.S. 644 (2020).

9. **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 7.

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 meaning of the Constitution does not change over time. However, the Supreme Court has acknowledged that "the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated, even though its meaning is fixed according to the understandings of those who ratified it." *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 3 (2022).

11. **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: The legal rule addressed in *Rivas-Villegas v. Cortesluna* is qualified immunity, a legal doctrine that shields government officials from personal liability for actions taken in the course of their employment, provided those actions do not violate clearly established constitutional rights.

In *Rivas-Villegas v. Corestluna*, the Supreme Court reversed the Ninth Circuit Court of Appeals in a decision denying qualified immunity to a police officer. The officer had briefly placed his knee on the back of an armed suspect while removing the weapon and handcuffing the suspect. The suspect sued the officer under 42 U.S.C. § 1983 claiming the officer used excessive force. The Supreme Court ultimately held that the officer was entitled to qualified immunity as the officer had not violated clearly established law.

12. 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: A nationwide injunction is a legal remedy that halts an action from taking place or prevents the enforcement of a rule, regulation, or policy on a nationwide scale. The Supreme Court recently considered the case of *Trump v. Hawaii*, 585 U.S. 667 (2018), where a nationwide injunction was issued. However, the Court did not ultimately rule on the propriety of the nationwide injunction. A district judge should address a request for a nationwide injunction carefully, as a nationwide injunction can direct how a defendant must act toward persons who are not parties to the case. *See Dep't of Homeland Sec. v. New York*, 140 S. Ct. 599, 600, 206 L. Ed. 2d 115 (2020). Further, a district judge should consider whether injunctive relief is "no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs," *Nebraska v. Biden*, 52 F.4th 1044, 1048 (8th Cir. 2022) quoting *Madsen v. Women's Health Ctr., Inc.*, 512 U.S. 753, 765 (1994) and "workable." *Id*. quoting *North Carolina v. Covington*, 581 U.S. 486 (2017).

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

Respond: No.

14. Will you fully and faithfully apply all precedents of the U.S. Supreme Court and the U.S. Court of Appeals under which you would sit?

Response: Yes.

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

Response: Dicta is not legally binding. If confirmed, I would faithfully apply binding precedent from the Supreme Court and Eighth Circuit.

16. Have you ever considered an applicant's race, sex, or religion when making a hiring decision? If so, please provide full details.

Response: No.

17. When reviewing applications from persons seeking to serve as an intern, extern, or law clerk in your chambers, what role would the race, sex, or religion of the applicants play in your consideration?

Response: None. I would consider an applicant's qualifications based on their accomplishments and experiences. I would not consider race, sex, or religion when making hiring decisions.

Questions from Senator Thom Tillis
for Camela Catherine Theeler, nominated to serve as U.S. District Judge for the District of South Dakota

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

   Response: A judge's personal views and background must not be taken into consideration when applying the law. It is a judge's responsibility and obligation to apply applicable law and binding Supreme Court and Eighth Circuit precedent.

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

   Response: I believe it is a judge's responsibility and obligation to approach each case with impartiality and fairness.

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

   Response: Black's Law Dictionary defines judicial activism as "A philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions." I do not consider judicial activism to be appropriate. A judge's personal views and background must not be taken into consideration when applying the law. It is a judge's responsibility and obligation to apply applicable law and binding Supreme Court and Eighth Circuit precedent.

4. **Should a judge second-guess policy decisions by Congress or state legislative bodies to reach a desired outcome?**

   Response: No.

5. **Does faithfully interpreting the law sometimes result in an undesirable outcome? How, as a judge, do you reconcile that?**

   Response: It is common that a judge's interpretation of the law and ruling in a case is disappointing to at least one of the parties involved in the case. That is the nature of litigation. However, it is a judge's responsibility to apply applicable law and binding Supreme Court and Circuit precedent, regardless of a judge's personal feelings about the outcome and regardless of a parties' response to the judge's ruling.

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

Response: I will apply binding Supreme Court precedent, as set forth in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022), *McDonald v. City of Chicago, Ill*., 561 U.S. 742 (2010), and *District of Columbia v. Heller*, 554 U.S. 570 (2008).

7. What process do you follow when considering qualified immunity cases, and under the law, when must the court grant qualified immunity to law enforcement personnel and departments?

Response: "Qualified immunity shields government officials from liability unless their conduct violates clearly established statutory or constitutional rights of which a reasonable person would know." *Mallak v. City of Baxter*, 823 F.3d 441 (8th Cir. 2016). In considering a qualified immunity case I would examine whether the facts demonstrate a deprivation of a constitutional right, and whether the right was clearly established at the time of the deprivation. *See Solomon v. Petray*, 699 F.3d 1034, 1038 (8th Cir. 2012).

8. Do you believe that qualified immunity jurisprudence provides sufficient protection for law enforcement officers who must make split-second decisions when protecting public safety?

Response: The Supreme Court recently addressed this issue in *Rivas-Villegas v. Cortesluna,* 595 U.S. 1 (2021). In that case the Court considered whether an officer had used excessive force when he briefly placed his knee on the back of an armed suspect while removing a weapon and handcuffing the suspect. The Court noted that "[S]pecificity is especially important in the Fourth Amendment context, where ... it is sometimes difficult for an officer to determine how the relevant legal doctrine, here excessive force, will apply to the factual situation the officer confronts." *Id*. at 6, quoting *Mullenix v. Luna*, 577 U.S. 7 at 12 (2015). "Whether an officer has used excessive force depends on "the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." *Id*. quoting *Graham v. Connor*, 490 U.S. 386, 396 (1989).

If I were so honored to be confirmed as a federal district court judge, I would faithfully apply applicable law and binding Supreme Court and Eighth Circuit precedent regarding qualified immunity for law enforcement officers.

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

Response: As a state court judge and judicial nominee, I am generally precluded from commenting on any belief that I might have as to the proper scope of qualified immunity protections for law enforcement. If confirmed, I would faithfully follow and apply applicable law and binding Supreme Court and Eighth Circuit precedent regarding qualified immunity for law enforcement officers.

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

Response: Article 1, Section 8, Clause 8, of the United States Constitution sets forth the Patent and Copyright Clause that grants Congress the enumerated power "To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries." If I were so honored to be confirmed as a federal district court judge, I would faithfully apply the law regarding intellectual property.

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

Response: In my 17 years of legal practice and 6 years on the state court bench, I have not dealt with any patent litigation cases or had the occasion to address any allegations of "forum shopping" or "judge shopping." Jurisdiction and venue establish whether a lawsuit is properly brought before a court.

12. The Supreme Court has repeatedly waded into the area of patent eligibility, producing a series of opinions in cases that have only muddled the standards for what is patent eligible. The current state of eligibility jurisprudence is in shambles. What are your thoughts regarding the Supreme Court's patent eligibility jurisprudence?

Response: As a state court judge and judicial nominee, I am generally precluded from commenting on any belief that I might have as to Supreme Court patent eligibility jurisprudence. If confirmed, I would faithfully follow and apply applicable law and binding Supreme Court and Eighth Circuit precedent.