Senator Lindsey Graham, Ranking Member
Questions for the Record
Laura Margarete Provinzino
Nominee to be United States District Judge for the District of Minnesota

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 to Question 2 and all subparts: I have never been a citizen of another country.

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: It is generally inappropriate to consider foreign law when interpreting the United States Constitution. I am aware, however, that the Supreme Court has considered historical laws of England when evaluating the original public meaning of constitutional provisions, such as the Second Amendment and the Sixth Amendment's Confrontation Clause. *See, e.g.*, *United States v. Rahimi*, 602 U.S. ---- (2024); *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022); *Giles v. California*, 554 U.S. 353 (2008). The Supreme Court has also referred to the laws of other countries and to international authorities as instructive for its interpretation of the Eighth Amendment's prohibition of "cruel and unusual punishments." *See Roper v. Simmons*, 543 U.S. 551 (2005).

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. The role of the judge is to apply precedent to the facts in a fair and impartial manner and without regard to personal opinions and values. If confirmed, I would follow Supreme Court and Eighth Circuit precedent when interpreting the Constitution. I would not exercise my "own independent value judgments."

7. **In a concurrence in the denial of rehearing en banc in *Al–Bihani v. Obama* then-Judge Kavanaugh wrote: "international-law norms are not domestic U.S. law in the absence of action by the political branches to codify those norms." Is this a correct statement of law?**

   Response: Yes. *See Nestlé USA, Inc. v. Doe*, 593 U.S. 628, 634–37 (2021); *Sosa v. Alvarez-Machin*, 542 U.S. 692, 735–36 (2004); *Ludecke v. Watkins*, 335 U.S. 160, 168–70 (1948).

8. **Please define the term "prosecutorial discretion."**

   Response: The Department of Justice has set forth Principles of Federal Prosecution in Title 9 of the Justice Manual. Under the federal criminal justice system, the prosecutor has wide latitude in determining when, whom, how, and even whether to prosecute for apparent violations of federal criminal law. This includes broad discretion in such areas as initiating or forgoing prosecutions, selecting or recommending specific charges, and accepting guilty pleas. This discretion has been recognized by the Supreme Court. *See, e.g.*, *United States v. LaBonte*, 520 U.S. 751, 762 (1997). Although prosecutorial discretion is broad, it is not "unfettered." Selectivity in the enforcement of criminal laws is . . . subject to constitutional constraints." *United States v. Batchelder,* 442 U.S. 114, 125 (1979). In particular, the decision to prosecute may not be "deliberately based upon an unjustifiable standard such as race, religion, or other arbitrary classification," *Bordenkircher v. Hayes*, 434 U.S. 357, 364 (1978) (quoting *Oyler v. Boyles*, 368 U.S. 448, 456 (1962)). Federal prosecutors are tasked with making certain that the general purposes of criminal law—assurance of warranted punishment, deterrence of further criminal conduct, protection of the public from offenders, and rehabilitation of offenders—are met, while making certain that the rights of individuals are scrupulously protected. U.S. Dep't of Just., Just. Manual § 9-27.110.

9. **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. This is not an appropriate approach for a federal judge to take. A federal judge must apply relevant precedent and decide cases within the parameters of established law.

10. **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.

11. **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.

12. **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: Post-conviction, a sentenced prisoner may seek relief by direct appeal under 28 U.S.C. § 1291; by motion to vacate, set aside, or correct the sentence under 28 U.S.C. § 2255; by petition for writ of habeas corpus under 28 U.S.C. § 2241; by motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A); by petition under the U.S. Sentencing Commission's Amendment 821 seeking retroactive effect to Sentencing Guidelines changes regarding criminal history points; and by government motion under Federal Rule of Criminal Procedure 35(b) requesting that the court reduce a sentence based on substantial assistance provided.

13. **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, a nonprofit organization, sued Harvard College and the University of North Carolina, alleging that their admissions policies violated the Equal Protection Clause of the Fourteenth Amendment and Title VI of the Civil Rights

Act of 1964 by using race as a factor in admissions. The Supreme Court concluded that the admissions policies violated the Equal Protection Clause and were therefore unconstitutional. *See Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 213–15 (2023). The Supreme Court explained that the admissions policies failed to satisfy strict scrutiny. The interests underlying the policies, which the schools viewed as compelling, could not be subjected to meaningful judicial review. The schools failed to demonstrate a meaningful connection between the means they employed and the goals they pursued. The admissions policies resulted in negative racial stereotyping. And the schools offered no logical endpoint to their race-based admission policies.

14. **Have you ever participated in a decision, either individually or as a member of a group, to hire someone or to solicit applications for employment?**

    Response: Yes.

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

    Response: I participated in hiring decisions while an associate attorney at Robins Kaplan LLP and as an Assistant United States Attorney when I was part of the management team between 2018 and 2023. I also served on the merit selection panel that interviewed and recommended finalists for United States Magistrate Judge for the District of Minnesota in 2022.

15. **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, sex, sexuality, or gender identity?**

    Response: No.

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

    Response: No.

17. **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, sex, sexuality, or gender identity?**

    Response: To the best of my knowledge, none of my employers used such preferences.

If yes, please list each responsive employer and your role at that employer. Please also describe, with respect to each employer, the preference given. Please state whether you played any part in the employer's decision to grant the preference.

Response: Not applicable.

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

Response: The Supreme Court and Eighth Circuit apply strict scrutiny to race-based differentiations. *See Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181 (2023); *Sherbrooke Turf, Inc. v. Minnesota Dep't of Transp.*, 345 F.3d 964 (8th Cir. 2003).

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

Response: The Supreme Court concluded that enforcement of the Colorado Anti-Discrimination Act (CADA) violated the free speech rights of a web designer because it would have compelled the designer's speech. Specifically, enforcement would have compelled the web designer to create websites celebrating same-sex weddings, which were against the designer's personal religious beliefs. The Supreme Court explained that CADA impermissibly sought "to force an individual to speak in ways that align with its views but defy her conscience about a matter of major significance." *303 Creative LLC v. Elenis*, 600 U.S. 570, 602–03 (2023).

20. **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. The Supreme Court cited *Barnette* recently in *303 Creative LLC v. Elenis*, 600 U.S. 570, 585 (2023). *Barnette* is binding precedent. If confirmed, I will faithfully and objectively apply binding precedent of the Supreme Court and the Eighth Circuit.

21. **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: Under the First Amendment, courts must consider the text of the law. If a law regulating speech is "content-based" then the law is subject to strict scrutiny. If a law regulating speech is "content-neutral," then the law is subject to intermediate scrutiny. 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." *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015). Although a law may appear content-neutral on its face, the law will be considered content-based if it "cannot be justified without reference to the content of the regulated speech" or if it was "adopted by the government because of disagreement with the message [the speech] conveys." *Id.* at 164. A speech regulation "targeted at specific subject matter is content based even if it does not discriminate among viewpoints within that subject matter." *Id.* at 169; *see also City of Austin v. Reagan Nat'l Advert. of Austin, LLC*, 596 U.S. 61, 76 (2022) ("If there is evidence that an impermissible purpose or justification underpins a facially content-neutral restriction, for instance, that restriction may be content based."). The Eighth Circuit also differentiates between content-based and content-neutral restrictions. *See, e.g.*, *Sessler v. City of Davenport*, 990 F.3d 1150 (8th Cir. 2021); *Phelps-Roper v. Ricketts*, 867 F3d 883, 892 (8th Cir. 2017). If confirmed and confronted with a question involving whether a government regulation is content-based or content-neutral, I will faithfully and objectively follow Supreme Court and Eighth Circuit precedent.

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

Response: In *Counterman v. Colorado*, 600 U.S. 66, 74 (2023), the Supreme Court identified that "true threats" are "serious expressions" conveying that a speaker means to "commit an act of unlawful violence." True threats are not protected by the First Amendment. The First Amendment requires proof in a criminal action regarding a true threat that the defendant had some subjective understanding of the threatening nature of his statements. *Id.* at 71–83. For true threats, the Supreme Court held that a mental state of recklessness strikes the right balance, offering "enough 'breathing space' for protected speech," without sacrificing too many of the benefits of enforcing laws against true threats." *Id.* at 82 (quoting *Elonis v. United States*, 575 U.S. 723, 748 (2015)). The standard for determining whether a statement is not protected speech under the true threats doctrine requires (1) that a reasonable person would understand the defendant's statements as threats and (2) awareness on the defendant's part that the statements could be understood that way in order to satisfy the recklessness mens rea required by the First Amendment.

23. **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: Facts are "questions of who did what, when or where, how or why." *U.S. Bank Nat'l Ass'n ex rel. CWCapital Asset Mgmt. LLC v. Vill. at Lakeridge, LLC*, 583 U.S. 387, 394 (2018); *see also Nodaway Valley Bank v. Cont'l Cas. Co.*, 916 F.2d 1362, 1366 (8th Cir. 1990) ("While the inquiry necessarily started with legal considerations, however, the ultimate determination was primarily a judgmental one in which facts were analyzed in light of the controlling law. We are convinced this is in essence a factual inquiry."). Black's Law Dictionary defines fact as "something that actually exists," and "an actual . . . event or circumstance, as distinguished from its legal effect, consequence or interpretation." BLACK'S LAW DICTIONARY (11th ed. 2019). The Supreme Court has recognized on more than one occasion the "vexing" nature of the distinction between questions of fact and questions of law. *Pullman-Standard v. Swint*, 456 U.S. 273, 288 (1982). *Pullman-Standard* found that Federal Rule of Civil Procedure 52(a) "does not furnish particular guidance with respect to distinguishing law from fact. Nor do we yet know of any other rule or principle that will unerringly distinguish a factual finding from a legal conclusion." *Id.* More recently, the Supreme Court noted that for mixed questions of law and fact, a court must attempt to "break such a question into its separate factual and legal parts," and "when a question can be reduced no further," determine whether answering it entails primarily "legal or factual work." *See Google LLC v. Oracle Am., Inc.,* 593 U.S. 1, 24 (2021) (quoting *U.S. Bank Nat'l Ass'n*, 583 U.S. at 396).

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

Response: Under Section 3553 of Title 18 of the United State Code, Congress has identified all four purposes as goals of sentencing without directing that any one purpose be entitled to greater weight than another. As an Assistant United States Attorney, I evaluate and advocate for an appropriate sentence based on all § 3553(a) factors to the extent that they are applicable to the circumstances of any given case. If confirmed, I will apply binding Supreme Court and Eighth Circuit precedent, the § 3553(a) factors, and relevant provisions of the United States Sentencing Guidelines when making sentencing decisions.

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

Response: As a judicial nominee, I am precluded from commenting on the quality of the reasoning of any particular Supreme Court decision under the Code of Conduct for United States Judges. If confirmed, I would faithfully follow Supreme Court and Eighth Circuit precedent without regard to any personal view I might have.

26. **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 judicial nominee, I am precluded from commenting on the quality of the reasoning of any particular Eighth Circuit decision under the Code of Conduct for United States Judges. If confirmed, I would faithfully follow Supreme Court and Eighth Circuit precedent without regard to any personal view I might have.

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

Response: The conduct prohibited by 18 U.S.C. § 1507 includes picketing, parading, using a "sound-truck or similar device," and "resort[ing] to any other demonstration" in or near a federal courthouse or any building (including a personal residence) used by a federal judge, juror, witness, or court officer "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."

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

Response: There is limited case law involving 18 U.S.C. § 1507. I have identified five citations to the statute in Supreme Court cases and one citation in an Eighth Circuit case. Based on my research, I have not identified any Supreme Court or Eighth Circuit precedent holding that § 1507 is unconstitutional. In *Cox v. Louisiana*, 379 U.S. 559, 561 (1965), the Supreme Court reviewed a Louisiana statute modeled after the federal statute. The Court stated: "Nor does such a statute infringe upon the constitutionally protected rights of free speech and free assembly. The conduct which is the subject of the statute—picketing and parading—is subject to regulation even though intertwined with expression and association." *Id.* at 563. The defendant in the Eighth Circuit case, *United States v. Carter*, 717 F.2d. 1216 (8th Cir. 1983), did not challenge that 18 U.S.C. § 1507, as applied to his conduct, was unconstitutional under the First Amendment. The Eighth Circuit noted: "A Louisiana statute modeled on the bill that later became § 1507 was held valid on its face and as applied to the conduct then before the Court in *Cox v. Louisiana*, 379 U.S. 599 (1965)." *Carter*, 717 F.2d at 1218. Because the defendant did not bring a First Amendment challenge, the Eighth Circuit expressed no view on the question of the validity of § 1507 as applied to the conduct revealed by the record. *Id.*

29. **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 judicial nominee, I am precluded under the Code of Conduct for United States Judges from commenting on whether any particular Supreme Court decision was decided correctly. That said, the legal issues presented in *Brown* are so well-settled and unlikely to become the subject of litigation. Accordingly, I am comfortable expressing my view that *Brown* was correctly decided.

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

Response: As a judicial nominee, I am precluded under the Code of Conduct for United States Judges from commenting on whether any particular Supreme Court decision was decided correctly. That said, the legal issues presented in *Loving* are so well-settled and unlikely to become the subject of litigation. Accordingly, I am comfortable expressing my view that *Loving* was correctly decided.

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

Response: As a judicial nominee, I am precluded under the Code of Conduct for United States Judges from commenting on whether any particular Supreme Court decision was decided correctly. If confirmed, I would faithfully apply *Griswold*.

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

Response: As a judicial nominee, I am precluded under the Code of Conduct for United States Judges from commenting on whether any particular Supreme Court decision was decided correctly. I can state that the Supreme Court has overturned *Roe v. Wade* and that *Dobbs v. Jackson Women's Health* is binding precedent. If confirmed, I would faithfully apply *Dobbs*.

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

Response: As a judicial nominee, I am precluded under the Code of Conduct for United States Judges from commenting on whether any particular Supreme Court decision was decided correctly. I can state that the Supreme Court has overturned *Planned Parenthood v. Casey* and that *Dobbs v. Jackson Women's Health* is binding precedent. If confirmed, I would faithfully apply *Dobbs*.

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

Response: As a judicial nominee, I am precluded under the Code of Conduct for United States Judges from commenting on whether any particular Supreme Court decision was decided correctly. If confirmed, I would faithfully apply *Gonzales v. Carhart*.

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

Response: As a judicial nominee, I am precluded under the Code of Conduct for United States Judges from commenting on whether any particular Supreme Court decision was decided correctly. If confirmed, I would faithfully apply *Heller*.

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

Response: As a judicial nominee, I am precluded under the Code of Conduct for United States Judges from commenting on whether any particular Supreme Court decision was decided correctly. If confirmed, I would faithfully apply *McDonald*.

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

Response: As a judicial nominee, I am precluded under the Code of Conduct for United States Judges from commenting on whether any particular Supreme Court decision was decided correctly. If confirmed, I would faithfully apply *Hosanna-Tabor*.

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

Response: As a judicial nominee, I am precluded under the Code of Conduct for United States Judges from commenting on whether any particular Supreme Court decision was decided correctly. If confirmed, I would faithfully apply *Bruen*.

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

Response: As a judicial nominee, I am precluded under the Code of Conduct for United States Judges from commenting on whether any particular Supreme Court decision was decided correctly. Judges. If confirmed, I would faithfully apply *Dobbs*.

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 judicial nominee, I am precluded under the Code of Conduct for United States Judges from commenting on whether any particular Supreme Court decision was decided correctly. If confirmed, I would faithfully apply *Students for Fair Admissions*.

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

Response: As a judicial nominee, I am precluded under the Code of Conduct for United States Judges from commenting on whether any particular Supreme Court decision was decided correctly. If confirmed, I would faithfully apply *303 Creative*.

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

Response: The Supreme Court has held that the Second Amendment guarantees an individual right to carry firearms outside the home for purposes of self-defense. *New York*

State Rifle & Pistol Ass'n, Inc. v. Bruen, 597 U.S. 1 (2022). When considering the constitutionality of a restriction on firearms, district courts must consider whether "the Second Amendment's plain text covers the restricted conduct," and, if so, whether the government has carried its burden "to demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation." *Id.* at 24. A court must ascertain whether the new law is "relevantly similar" to laws that our tradition is understood to permit, "apply[ing] faithfully the balance struck by the founding generation to modern circumstances." *Id.* at 29. Why and how the regulation burdens the right are central to this inquiry. As *Bruen* explained, a challenged regulation that does not precisely match its historical precursors "still may be analogous enough to pass constitutional muster." *United States v. Rahimi*, 602 U.S. ----, 144 S. Ct. 1889, 1898 (2024) (quoting *Bruen*, 597 U.S. at 30). If confirmed, I will faithfully and objectively apply Supreme Court and Eighth Circuit precedent regarding the Second Amendment.

31. **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, including Brian Fallon, Christopher Kang, Tamara Brummer, Jen Dansereau, and/or Becky Bond, 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, including, but not limited to: Brian Fallon, Christopher Kang, Tamara Brummer, Jen Dansereau, and/or Becky Bond,? If so, who?**

       Response: No.

    c. **Have you ever been in contact with anyone associated with Demand Justice, including, but not limited to: Brian Fallon, Christopher Kang, Tamara Brummer, Jen Dansereau, and/or Becky Bond? If so, who?**

       Response: No.

32. **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, including, but not limited to, Rakim Brooks, Betsy Miller Kittredge, Nan Aron, Jake Faleschini, and/or Zachery Morris, 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 including, but not limited to: Rakim Brooks, Betsy Miller Kittredge, Nan Aron, Jake Faleschini, and/or Zachery Morris? If so, who?**

Response: No.

c. **Have you ever been in contact with anyone associated with Alliance for Justice, including, but not limited to: Rakim Brooks, Betsy Miller Kittredge, Nan Aron, Jake Faleschini, and/or Zachery Morris? If so, who?**

Response: No.

33. **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.

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

        Response: No.

    b. **Are you currently in contact with anyone associated with Arabella Advisors, including, but not limited to: Eric Kessler, Himesh Bhise, Joseph Brooks, Isaiah Castilla, and/or Saurabh Gupta?**

    Response: No.

        i. **Please include in this answer anyone associated with Arabella's subsidiaries, including the Sixteen Thirty Fund, the New Venture Fund, the Hopewell Fund, the Windward Fund, the North Fund, or any other such Arabella dark-money fund that is still shrouded.**

Response: No.

c. **Have you ever been in contact with anyone associated with Arabella Advisors, including, but not limited to: Eric Kessler, Himesh Bhise, Joseph Brooks, Isaiah Castilla, and/or Saurabh Gupta?**

Response: No.

i. **Please include in this answer anyone associated with Arabella's subsidiaries, such as the Sixteen Thirty Fund, the New Venture Fund, the Hopewell Fund, the Windward Fund, the North Fund, or any other such Arabella dark-money fund that is still shrouded.**

Response: No.

34. **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, including but not limited to: George Soros, Alexander Soros, Mark Malloch-Brown, and/or Binaifer Nowrojee?**

Response: No.

c. **Have you ever been in contact with anyone associated with the Open Society Foundations including but not limited to: George Soros, Alexander Soros, Mark Malloch-Brown, and/or Binaifer Nowrojee?**

Response: No.

d. **Have you ever received any funding, or participated in any fellowship or similar program affiliated with the Open Society network?**

Response: No. I have not personally received any funding or participated in any fellowship affiliated with Open Society. I have been a volunteer and board member of the Infinity Project, a nonpartisan organization that mentors women

seeking to become judges within the Eighth Circuit. From roughly 2010 to 2017, the Infinity Project was a recipient of an Open Society Foundation grant to fund its sole staff member. During that period, I was not involved in procuring funding for the Infinity Project.

35. **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, including, but not limited to: Gabe Roth, and/or Josh Cohen? If so, who?**

       Response: No.

    c. **Have you ever been in contact with anyone associated with Fix the Court including, but not limited to: Gabe Roth, and/or Josh Cohen? If so, who?**

       Response: No.

36. **The Raben Group is a lobbying group that "champions diversity, equity, and justice as core values that ignite our mission for impactful change in corporate, nonprofit, government and foundation work." The group prioritizes judicial nominations and its list of clients have included the Open Society Foundations, the American Civil Liberties Union, the New Venture Fund, the Sixteen Thirty Fund, and the Hopewell Fund. It staffs the Committee for a Fair Judiciary.**
    a. **Has anyone associated with The Raben Group 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 Raben Group, including but not limited to: Robert Raben, Donald Walker, Patty First, Joe Onek, Gara LaMarche, Steve Sereno, Dylan Tureff and/or Katherine Huffman? If so, who?**

       Response: No.

c. **Have you ever been in contact with anyone associated with The Raben Group including but not limited to: Robert Raben, Donald Walker, Patty First, Joe Onek, Gara LaMarche, Steve Sereno, Dylan Tureff, and/or Katherine Huffman? If so, who?**

Response: No.

d. **Has anyone associated with the Raben Group offered to assist you with your nomination, including but not limited to organizing letters of support?**

Response: No.

37. **The Committee for a Fair Judiciary "fights to confirm diverse and progressive federal judges to counter illegitimate right-wing dominated courts" and is staffed by founder Robert Raben.**
    a. **Has anyone associated with the Committee for a Fair Judiciary requested that you provide 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 Committee for a Fair Judiciary, including, but not limited to: Jeremy Paris, Erika West, Elliot Williams, Nancy Zirkin, and/or Joe Onek? If so, who?**
    Have you ever been in contact with anyone associated with the Committee for a Fair Judiciary, including, but not limited to: Jeremy Paris, Erika West, Elliot Williams, Nancy Zirkin, and/or Joe Onek? If so, who?

    Response: No.

38. **The American Constitution Society is "the nation's foremost progressive legal organization" that seeks to "support and advocate for laws and legal systems that redress the founding failures of our Constitution, strengthen our democratic legitimacy, uphold the role of law, and realize the promise of equality for all, including people of color, women, LGBTQ+ people, people with disabilities, and other historically excluded communities."**
    a. **Has anyone associated with the American Constitution Society, 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 American Constitution Society including, but not limited to Russ Feingold? If so, who?**

Response: No.

c. **Have you ever been in contact with anyone associated with the American Constitution Society including, but not limited to Russ Feingold? If so, who?**

Response: I have been in the audience while I was a student at Yale Law School and as a practicing lawyer in Minneapolis at public debates and other events that were sponsored in whole or in part by the American Constitution Society. Other than that, I have not been in contact with anyone associated with the American Constitution Society.

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 February 28, 2024, I submitted to Senator Amy Klobuchar and Senator Tina Smith a letter of interest to serve in the position of District Judge for the United States District Court for the District of Minnesota. On April 5, 2024, I interviewed with the Judicial Selection Committee established by Senators Klobuchar and Smith to evaluate and recommend candidates for the District of Minnesota. I heard from Senators Klobuchar and Smith on April 17 and April 18, 2024, respectively, and was told that my name was forwarded with several other candidates to the White House Counsel's Office. I interviewed with attorneys from the White House Counsel's Office on April 23, 2024. On May 3, 2024, I was contacted by the White House Counsel's Office and advised that I was being considered for potential nomination. Since that date, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On June 12, 2024, the President announced his intent to nominate me. On June 13, 2024, my nomination was submitted to the Senate. After my nomination, I was again in contact with the White House Counsel's Office.

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 Alliance for Justice, 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, the Hopewell Fund, the Windward Fund, the North Fund, or any other such Arabella dark-money fund that is still shrouded.**

Response: No.

43. **During or leading up to 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 or leading up to 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. **During or leading up to your selection process, did you talk with any officials from or anyone directly associated with The Raben Group or the Committee for a Fair Judiciary, or did anyone do so on your behalf? If so, what was the nature of those discussions?**

Response: No.

46. **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.

47. **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,**
    i. **Who?**

ii. What advice did they give?

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

Response: Not applicable.

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

Response: I interviewed with attorneys from the White House Counsel's Office on April 23, 2024. On May 3, 2024, I was contacted by the White House Counsel's Office and advised that I was being considered for potential nomination. Since that date, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On June 12, 2024, the President announced his intent to nominate me. On June 13, 2024, my nomination was submitted to the Senate.

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

Response: I received these questions from the Office of Legal Policy at the Department of Justice on July 17, 2024. I reviewed each question and relevant Supreme Court and Eighth Circuit caselaw to provide specific answers with citations to legal authority. I submitted a draft of my responses to the Office of Legal Policy who provided limited feedback for my consideration. I made minor revisions, finalized, and then submitted my answers.

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

Questions for the Record for Laura Margarete Provinzino nominated to serve as United States District Judge for the District of Minnesota

I. Directions

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

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

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

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

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

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

II. Questions

1. **Is racial discrimination wrong?**

Response: Yes. Discriminatory conduct on the basis of race that violates the Constitution or federal statutes is unlawful. Congress has enacted statutes prohibiting racial discrimination, such as the Civil Rights Act of 1964. The Supreme Court has also recognized race as a suspect classification subject to strict scrutiny. *See, e.g.*, *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 493–94 (1989).

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

Response: The Constitution protects some unenumerated rights that are "deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty" such that "neither liberty nor justice would exist if they were sacrificed." *Washington v. Glucksberg*, 521 U.S. 702, 720–21 (1997). Examples of unenumerated rights that the Supreme Court has recognized include the right to marry, *Loving v. Virginia*, 388 U.S. 1 (1967); the right to marital privacy, including contraception, *Griswold v. Connecticut*, 381 U.S. 479 (1965); the right to have children, *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942); and the right to control the education of such children, *Meyer v. Nebraska*, 262 U.S. 390 (1923). If confirmed and confronted with a claim that an unenumerated right not recognized by the Supreme Court exists, I would apply the *Glucksberg* framework along with any relevant Supreme Court and Eighth Circuit precedent.

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

Response: I have not spent much time studying or classifying the judicial philosophies of U.S. Supreme Court Chief Justices. My judicial philosophy will be based on the goals of maintaining impartiality and providing equal justice under the law. I will prepare diligently for all proceedings and consider fairly the arguments of the parties. I will ensure that each litigant has a sufficient opportunity to be heard. I will thoroughly research and study the applicable law and apply that law to the facts of the case. And I will fairly apply Supreme Court and Eighth Circuit precedent to the matters before me. I will be mindful of the limited role of a judge. Chief Justice Roberts' words from his confirmation hearing ring true to me: "I will be open to the considered views of my colleagues on the bench, and I will decide every case based on the record, according to the rule of law, without fear or favor, to the best of my ability, and I will remember that it's my job to call balls and strikes, and not to pitch or bat." While not a Supreme Court Justice, former Chief Judge Edward Devitt in the District of Minnesota wrote an article in 1961 titled "Ten Commandments for the New Judge," which was published by the American Bar Association. Those commandments, including being kind, patient,

prompt, and dignified, and treating each case as important, continue to be true today and many of these notions will guide my judicial philosophy.

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

Response: Black's Law Dictionary provides two different definitions for the word "originalism," including (1) the doctrine that words of a legal instrument are to be given the meanings they had when they were adopted and (2) the doctrine that a legal instrument should be interpreted to effectuate the intent of those who prepared it or made it legally binding. BLACK'S LAW DICTIONARY (11th ed. 2019). The original public meaning of a provision plays a central role when interpreting the Constitution. The Supreme Court has set forth the importance of an "originalist" approach when interpreting various constitutional provisions, and I would faithfully apply that methodology. This includes, for example, when interpreting the First and Second Amendments. *See, e.g.*, *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 535 (2002) (instructing that the Establishment Clause must be interpreted by "reference to historical practices and understandings"); *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 34 (2022) ("Constitutional rights are enshrined with the scope they were understood to have *when the people adopted them*.") (quoting *District of Columbia v. Heller*, 554 U.S. 570, 634–35 (2008) (emphasis added)).

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

Response: The term "living constitutionalism" is defined as a doctrine that the Constitution should be interpreted and applied in accordance with changing circumstances and, in particular, with changes in social values. BLACK'S LAW DICTIONARY (11th ed. 2019). I am unaware of any binding Supreme Court or Eighth Circuit decisions endorsing the use of this interpretive method. If confirmed, I will faithfully apply Supreme Court and Eighth Circuit precedent to matters of constitutional interpretation.

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

Response: If presented with an issue of first impression concerning the interpretation of a disputed constitutional provision, I would begin with the plain text and apply the interpretive principles relied on in Supreme Court and Eighth Circuit precedent. This includes consideration of the original public meaning. *See, e.g.*, *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 535 (2002) (instructing that the Establishment Clause must be interpreted by "reference to historical practices and understandings"); *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 34 (2022) ("Constitutional rights are enshrined with the scope they were understood to have *when the people adopted*

them.") (quoting *District of Columbia v. Heller*, 554 U.S. 570, 634–35 (2008) (emphasis added)).

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

Response: Typically, no. The Supreme Court determines the "plain meaning" or ordinary public meaning of a disputed constitutional or statutory provision as of the time of enactment. *See, e.g.*, *Bostock v. Clayton Cty.*, 590 U.S. 644, 654 (2020) ("If judges could add to, remodel, update, or detract from old statutory terms inspired only by extratextual sources and our own imaginations, we would risk amending statutes outside the legislative process reserved for the people's representatives."); *District of Columbia v. Heller*, 554 U.S. 570, 576 (2008). The Supreme Court has recognized limited circumstances where current understanding of the Constitution or statute may be a relevant consideration. *See, e.g.*, *Roper v. Simmons*, 543 U.S. 551, 560 (2005) (considering "evolving standards of decency" when evaluating an Eighth Amendment challenge); *Miller v. California*, 413 U.S. 15, 24 (1973) (considering "contemporary community standards" when determining whether a challenged work is obscene and not protected by the First Amendment).

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

Response: No. The Founders created a Constitution "intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs." *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 27–28 (2022). Although its meaning is fixed according to the understandings of those who ratified it, the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated. *Id.* (citing as an example *United States v. Jones*, 565 U.S. 400, 404–05 (2012) (holding that installation of a tracking device was "a physical intrusion [that] would have been considered a 'search' within the meaning of the Fourth Amendment when it was adopted")).

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

Response: Yes. *Dobbs* is binding precedent. *Dobbs* overruled *Roe v. Wade* and *Planned Parenthood v. Casey*.

a. **Was it correctly decided?**

Response: As a judicial nominee, I am precluded under the Code of Conduct for United States Judges from commenting on whether any particular Supreme Court decision was decided correctly. If confirmed, I would faithfully follow binding Supreme Court and Eighth Circuit precedent without regard to any personal view I

might have.

10. **Is the Supreme Court's ruling in *Cooper v. Aaron* settled law?**

Response: Yes.

a. **Was it correctly decided?**

Response: As a judicial nominee, I am precluded under the Code of Conduct for United States Judges from commenting on whether any particular Supreme Court decision was decided correctly. If confirmed, I would faithfully follow binding Supreme Court and Eighth Circuit precedent without regard to any personal view I might have.

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

Response: Yes.

a. **Was it correctly decided?**

Response: As a judicial nominee, I am precluded under the Code of Conduct for United States Judges from commenting on whether any particular Supreme Court decision was decided correctly. If confirmed, I would faithfully follow binding Supreme Court and Eighth Circuit precedent without regard to any personal view I might have.

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

Response: Yes.

a. **Was it correctly decided?**

Response: As a judicial nominee, I am precluded under the Code of Conduct for United States Judges from commenting on whether any particular Supreme Court decision was decided correctly. That said, the legal issues presented in *Brown* regarding de jure segregation are so well-settled and unlikely to become the subject of litigation. Accordingly, I am comfortable expressing my view that *Brown* was decided correctly.

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

Response: Yes.

a. **Was it correctly decided?**

Response: As a judicial nominee, I am precluded under the Code of Conduct for United States Judges from commenting on whether any particular Supreme Court decision was decided correctly. If confirmed, I would faithfully follow binding Supreme Court and Eighth Circuit precedent without regard to any personal view I might have.

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

Response: Yes.

a. **Was it correctly decided?**

Response: As a judicial nominee, I am precluded under the Code of Conduct for United States Judges from commenting on whether any particular Supreme Court decision was decided correctly. If confirmed, I would faithfully follow binding Supreme Court and Eighth Circuit precedent without regard to any personal view I might have.

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

Response: A rebuttable presumption exists in favor of pretrial detention for certain offenses such that no release condition or combination of release conditions will reasonably assure the defendant's appearance in court and the safety of the community. 18 U.S.C. § 3142(e). These offenses include (1) narcotics offenses with a statutory maximum sentence of 10 years or more; (2) certain serious firearms offenses; (3) offenses involving acts of terrorism; (4) offenses involving slavery or human trafficking; and (5) certain offenses involving minors. 18 U.S.C. § 3142(e)(3)(A)–(F). As an Assistant United States Attorney, I have argued for pretrial detention consistent with the rebuttable presumption in favor of such detention in Project Safe Childhood and human trafficking cases.

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

Response: The Supreme Court held that the Bail Reform Act is regulatory in nature and does not constitute punishment before trial in violation of the Due Process Clause. *United States v. Salerno*, 481 U.S. 739, 748 (1987). "There is no doubt that preventing danger to the community is a legitimate regulatory goal." *Id.*; *see also* 18 U.S.C. § 3142(e)–(f) (listing offenses that Congress determined present a greater risk of flight or danger to the community). The Eighth Circuit also recognized the breadth of Congress's power in fashioning bail procedures in *United States v. Stephens*, 594 F.3d 1033, 1039 (8th Cir. 2010) (noting that *Salerno*, in upholding the Bail Reform Act, afforded Congress great leeway when constructing a legal framework for deciding whether to detain and how to release those charged

with federal crimes).

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

Response: Yes. Any government burden on the free exercise of religion must be neutral and generally applicable. *See Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 533 (1993). Strict scrutiny applies to determine whether the government's action "was justified by a compelling state interest and was narrowly tailored in pursuit of that interest." *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 525 (2022). The Supreme Court has determined that the Free Speech and Free Exercise Clauses of the First Amendment along with statutes like the Religious Freedom Restoration Act limit what governments can require of religious organizations and businesses operated by observant owners. *See, e.g.*, *303 Creative LLC v. Elenis*, 600 U.S. 570, 592 (2023); *Espinoza v. Montana Dep't of Revenue*, 591 U.S. 464, 486 (2020); *Masterpiece Cakeshop, Ltd. v. Colorado C.R. Comm'n*, 584 U.S. 617, 639–40 (2018); *Burwell v. Hobby Lobby Stores*, *Inc.*, 573 U.S. 682, 720–23, 736 (2014) (holding that in the context of the Religious Freedom Restoration Act, forcing one to choose between sincere religious beliefs and severe economic consequences imposes a substantial burden on the exercise of religion).

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

Response: The First Amendment, the Religious Freedom Restoration Act (RFRA), and the Religious Land Use and Institutionalized Persons Act (RLUIPA) prohibit discrimination on the basis of religion. *See, e.g.*, *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507 (2022) (concluding that a public employer's suspension of its employee for praying on a football field after games is subject to strict scrutiny); *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023) (concluding that compelling a person to speak the government's preferred message regarding same-sex marriage is subject to strict scrutiny); *Espinoza v. Montana Dep't of Revenue*, 591 U.S. 464 (2020) (concluding that excluding religious schools from generally available public benefits is subject to strict scrutiny); *Masterpiece Cakeshop, Ltd. v. Colorado C.R. Comm'n*, 584 U.S. 617 (2018) (concluding that facially-neutral laws enforced in a manner hostile to religion is subject to strict scrutiny); *Burwell v. Hobby Lobby Stores*, *Inc.*, 573 U.S. 682 (2014) (concluding that the substantial burden imposed by the government's requirement that contraception be covered by employer-provided insurance is subject to strict scrutiny).

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

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

Response: The Supreme Court enjoined the enforcement of an executive order issued by the Governor of New York that imposed "very severe restrictions on attendance at religious services." *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 15–16 (2020). In evaluating the factors applied to requests for a preliminary injunction, the Court concluded that the religious organizations were likely to prevail on their First Amendment claim because the executive order singled out "houses of worship for especially harsh treatment" relative to secular businesses and, therefore, failed to satisfy strict scrutiny. *Id.* at 17–18 (recognizing that stemming the spread of COVID-19 is a compelling interest but "it is hard to see how the challenged regulations can be regarding as 'narrowly tailored'"). The religious entities would suffer an irreparable harm because the "loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Id.* at 19. Finally, there was no showing that granting the applications would harm the public. *Id.*

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

Response: The Supreme Court held that the Ninth Circuit erred in denying the plaintiff an injunction against California restrictions on at-home religious gathering during the COVID-19 pandemic. *Tandon v. Newsom*, 593 U.S. 61 (2021). The Court concluded that the restrictions were not neutral and generally applicable because secular activity was treated more favorably than religious activity. *Id.* at 62. Whether two activities are comparable for purposes of the Free Exercise Clause "is concerned with the risks various activities pose, not the reasons why people gather." *Id.* The government bore the burden of establishing that less restrictive measures could not address its interest in reducing the spread of COVID-19. Even with modifications to California's COVID-19 restrictions, the case was not moot because the litigants remained under a "constant threat that government officials will use their power to reinstate the challenged restrictions." *Id.* at 64. The Supreme Court held the plaintiffs were entitled to emergency injunctive relief.

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

Response: Yes. The First Amendment's Free Exercise Clause applies outside the walls of houses of worship and homes. *See, e.g.*, *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507 (2022).

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

Response: In *Masterpiece Cakeshop v. Colorado Civil Rights Comm'n*, 584 U.S. 617, 621–25 (2018), the Supreme Court held that the Colorado Civil Rights Commission

violated the Free Exercise Clause in finding that a baker and devout Christian had violated the state's anti-discrimination act by declining to bake a cake to celebrate a same-sex couple's wedding in violation of his religious beliefs. If the government is to respect the Constitution's guarantee of the free exercise of religion, it cannot impose regulations "hostile to the religious beliefs of its citizens" or act in a manner that "passes judgment upon or presupposes the illegitimacy" of religious beliefs and practices. *Id.* at 638.

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

Response: The Supreme Court has held that the First Amendment protects beliefs that are rooted in religion. Religious beliefs "need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." *Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 714 (1981). It is not for courts to say that an individual's religious beliefs are mistaken. Instead, the question is whether the belief reflects "an honest conviction." *Burwell v. Hobby Lobby*, 573 U.S. 682, 725 (2014) (quoting *Thomas*, 450 U.S. at 716).

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

Response: Please see my response to Question 22. If confirmed and faced with a case where a litigant's sincerely held religious beliefs were challenged, I would faithfully apply Supreme Court and Eighth Circuit precedent. The Eighth Circuit has noted that in considering cases involving interpretations of religious or church doctrine, courts "may not resolve disputes of religious doctrine or ecclesiastical policy, because such resolution would violate the First and Fourteenth Amendments." *Hutterville Hutterian Brethren, Inc. v. Sveen*, 776 F.3d 547, 553 (8th Cir. 2015) (citing *Serbian Eastern Orthodox Diocese for United States & Canada v. Milivojevich*, 426 U.S. 696, 715 n.8 (1976) and *Watson v. Jones*, 80 U.S. 679, 729 (1872)).

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

Response: Please see my response to Question 22. If confirmed and faced with a case where a litigant's sincerely held religious beliefs were challenged, I would faithfully apply Supreme Court and Eighth Circuit precedent.

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

Response: As a judicial nominee, it would be improper for me to articulate the "official position" of a religious organization. If confirmed, my role would be limited to assessing whether any individual's religious beliefs are sincerely held as

explained in my answer to Question 22.

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

Response: In *Our Lady of Guadalupe Sch. v. Morrisey-Berru*, 591 U.S. 732, 746 (2020), the Supreme Court explained that the First Amendment protects the right of religious institutions to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine. The First Amendment protects the autonomy of religious institutions with respect to internal management decisions essential to the institution's central mission. The employment discrimination claims advanced by two teachers fell within the "ministerial exception" because the religious teaching responsibilities lie at the core of the mission of the school. The teachers prayed with their students, attended religious services with the students, and prepared the students for participation in other religious activities. It does not matter if the teachers do not have the title of "minister" *Id.* at 752. "What matters, at bottom, is what an employee does." *Id.* at 753. The Supreme Court held that the ministerial exception, grounded in the First Amendment, barred the teachers' employment discrimination claims.

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

Response: The Supreme Court held that Philadelphia's refusal to contract with state-licensed Catholic Social Services unless the agency agreed to certify same-sex couples as foster parents violated the Free Exercise Clause. *Fulton v. City of Philadelphia*, 593 U.S. 522 (2021). Philadelphia's non-discrimination policy burdened the agency's religious exercise by forcing it to curtail its mission or to certify same-sex couples as foster parents in violation of its religious beliefs. *Id.* at 532. The non-discrimination policy was neither neutral nor generally applicable because the Commissioner was permitted to make exceptions to it. *Id.* at 534–35. Therefore, Philadelphia's non-discrimination policy failed strict scrutiny. *Id.* at 540–42.

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

Response: The Supreme Court held that Maine's tuition assistance program violated the First Amendment because the law was not neutral and generally applicable on account

of funding only non-religious schools. *Carson v. Makin*, 596 U.S. 767 (2022). The Supreme Court applied strict scrutiny and concluded that the state did not have a compelling interest in prohibiting the use of tuition payments at religious schools because a "neutral benefit program in which public funds flow to religious organizations through the independent choices of private benefit recipients does not offend the Establishment Clause." *Id.* at 781. Ultimately, a state need not subsidize private education, but once it decides to do so, "it cannot disqualify some private schools solely because they are religious." *Id.* at 779–80.

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

Response: The Supreme Court held that the suspension of a football coach for engaging in personal prayer on the sidelines after games violated the Free Exercise and Free Speech Clauses of the First Amendment. *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 512 (2022). The coach's post-game prayer did not occur while he was acting within the scope of his coaching duties, making it private speech and not government speech attributable to the school district. *Id.* at 529. Because the school district's policy prohibiting the coach's conduct was neither neutral nor generally applicable, it was subject to strict scrutiny. *Id.* at 526–27. The coach never coerced, required, or even asked any students to pray. *Id.* at 537. The Supreme Court concluded that prohibiting the prayer did not serve a compelling purpose. *Id.* at 532–38. Helpful to lower courts, the Supreme Court clarified that it had long abandoned the *Lemon v. Katzman* endorsement test relied on by the Ninth Circuit. *Id.* at 510.

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

Response: *Mast v. Fillmore County*, 141 S. Ct. 2430 (2021), involved an Amish community's request for an exemption from a county ordinance under the Religious Land Use and Institutionalized Persons Act. The judgment was vacated and remanded to the Minnesota Court of Appeals for further consideration in light of *Fulton v. City of Philadelphia*, 593 U.S. 522 (2021). Justice Gorsuch wrote that strict scrutiny requires a more precise analysis than the holding below where the County's general interest in sanitation regulations was treated as compelling without reference to the specific application of those rules to the 23 Amish families in Fillmore County. *Mast*, 141 S. Ct. at 2432 (Gorsuch, J., concurring). The County and lower courts failed to give due weight to exemptions provided to other groups. *Id.* Relatedly, the County and lower courts failed to give sufficient weight to rules in other jurisdictions. *Id.* at 2433. "In this country, neither the Amish nor anyone else should have to choose between their farms and their faith." *Id.* at 2434.

28. **Some people claim that Title 18, Section 1507 of the U.S. Code should not be interpreted broadly so that it does not infringe upon a person's First Amendment right to peaceably assemble. How would you interpret the statute in the context of**

the protests in front the homes of U.S. Supreme Court Justices following the *Dobbs* leak?

Response: As a judicial nominee, the Code of Conduct for United States Judges prohibits me from making public comments on the merits of a pending matter and from acting in a matter that would compromise public confidence in the integrity and impartiality of the judiciary. I am aware that the Supreme Court reviewed a Louisiana statute modeled after the federal statute. The Court stated: "Nor does such a statute infringe upon the constitutionally protected rights of free speech and free assembly. The conduct which is the subject of the statute—picketing and parading—is subject to regulation even though intertwined with expression and association." *Cox v. Louisiana*, 379 U.S. 559, 563 (1965). The singular ruling in the Eighth Circuit on the federal statute expressed no view on its constitutionality because the defendant did not raise a First Amendment challenge. *United States v. Carter*, 717 F.2d. 1216 (8th Cir. 1983). If confirmed and such an issue were presented, I would faithfully apply Supreme Court and Eighth Circuit precedent to the record in the case before me.

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

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

Response: No.

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

Response: No.

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

Response: No.

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

Response: No.

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

Response: Yes.

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

Response: Yes.

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

Response: The President has the authority under the Appointments Clause of the Constitution to make political appointments with the advice and consent of the Senate. U.S. CONST., ART. II, § 2, CL. 2. As a judicial nominee, I am prohibited from offering an opinion that could cause one to believe that I have prejudged an issue that could come before me. If confirmed and confronted with an issue concerning the consideration of race or sex when making a political appointment, I would review the arguments of the parties and faithfully apply Supreme Court and Eighth Circuit precedent to the facts of the case.

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

Response: Disparate impact claims are cognizable under certain federal antidiscrimination laws. *See, e.g.*, *Texas Dep't of Hous. & Cmty. Affs. v. Inclusive Cmtys. Project, Inc.*, 576 U.S. 519, 539 (2015). There, the Supreme Court cautioned that a disparate-impact claim that relies on a statistical disparity must fail if the plaintiff cannot point to a defendant's policy or policies causing that disparity. A robust causality requirement ensures that "[r]acial imbalance . . . does not, without more, establish a prima facie case of disparate impact" and thus protects defendants from being held liable for racial disparities they did not create. *Id.* at 542. Courts must therefore examine with care whether a plaintiff has made out a prima facie case of disparate impact and prompt resolution of these cases is important. *Id.* at 543. I am not aware of any Supreme Court or Eighth Circuit precedent addressing subconscious racial discrimination. If confirmed, I will faithfully apply Supreme Court and Eighth Circuit precedent to any such issue that is properly raised in a case before me.

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

Response: Whether Congress should increase, decrease, or take no action concerning the number of Supreme Court justices is a question for members of Congress to consider. If confirmed, I will apply Supreme Court and Eighth Circuit precedent regardless of the number of justices or judges involved in the precedential decision.

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

Response: No. Each justice on the Supreme Court was duly confirmed consistent with applicable provisions of the Constitution.

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

Response: The Supreme Court has held that the Second Amendment guarantees an individual and fundamental right to carry firearms outside the home for self-defense. *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 33 (2022) ("Constitutional rights are enshrined with the scope they were understood to have *when the people adopted them*.") (quoting *District of Columbia v. Heller*, 554 U.S. 570, 634–35 (2008) (emphasis added)). If confirmed, I will faithfully apply binding Second Amendment precedent.

37. **What kinds of restrictions on the Right to Bear Arms do you understand to be prohibited by the U.S. Supreme Court's decisions in *United States v. Heller*, *McDonald v. Chicago*, and *New York State Rifle & Pistol Association v. Bruen*?**

Response: The Supreme Court has identified the standard for applying the Second Amendment. 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. Only then may a court conclude that the individual's conduct falls outside the Second Amendment's "unqualified command." *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 24 (2022); *see also McDonald v. City of Chicago*, 561 U.S. 742, 750 (2010); *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008). As the Supreme Court recently identified, why and how a regulation burdens the Second Amendment is central to a court's inquiry. *United States v. Rahimi*, 602 U.S. ---, 144 S. Ct. 1889, 1898 (2024). For example, if laws at the founding regulated firearm use to address particular problems, that will be a strong indicator that contemporary laws imposing similar restrictions for similar reasons fall within a permissible category of regulations. *Id.* In applying the *Bruen* test, the Supreme Court recently held that when a restraining order contains a finding that an individual poses a credible threat to the physical safety of an intimate partner, that individual may—consistent with the Second Amendment—be banned from possessing firearms while the order is in effect. That is because since its founding, our Nation's firearm laws have included provisions preventing individuals who threaten physical harm to others from misusing firearms. As applied to the facts of the case, the Supreme Court held that the firearm statute at issue, 18 U.S.C. § 922(g)(8), "fits comfortably within this tradition." *Id.* at 1896–97.

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

Response: Yes. Please see my responses to Questions 36 and 37.

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

Response: No. The Supreme Court has explained that "the right to bear arms in public for self-defense is not 'a second-class right, subject to an entirely different body of rules

than the other Bill of Rights guarantees.'" *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 70 (2022) (citation omitted).

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

Response: No. The Supreme Court has explained that "the right to bear arms in public for self-defense is not 'a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.'" *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 70 (2022) (citation omitted).

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

Response: The Constitution provides that the President "shall take Care that the Laws be faithfully executed." U.S. CONST., ART. II, § 3. While discretion to execute the laws is "broad," it is not "unfettered." *Wayte v. United States*, 470 U.S. 598, 608 (1985). The Supreme Court has recognized that the Executive Branch "(i) invariable lacks the resources to arrest and prosecute every violator of every law and (ii) must constantly react and adjust to the ever-shifting public-safety and public-welfare needs of the American people." *United States v. Texas*, 599 U.S. 670, 679–80 (2023). In Article III cases and Administrative Procedure Act cases, the Supreme Court has "consistently recognized that federal courts are generally not the proper forum for resolving claims that the Executive Branch should make more arrests or bring more prosecutions." *Id.* at 680. If confirmed, I would faithfully apply Supreme Court and Eighth Circuit precedent.

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

Response: That issue was before the Supreme Court in *United States v. Texas*, 599 U.S. 670 (2023). The Supreme Court held that in the absence of any precedent, history, or tradition of courts ordering the Executive Branch to change its arrest or prosecution policies, the States lacked a judicially cognizable interest in the Executive Branch's arrest or prosecution policies that was redressable by courts. Thus, the States lacked Article III standing to bring an action against federal agencies and officials under the Administrative Procedure Act. *Id.* 678–79. If confirmed, I would follow Supreme Court and Eighth Circuit precedent, including the Supreme Court's recent guidance to lower courts in reviewing agency's interpretation of law under the Administrative Procedure Act in *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244 (2024).

43. **Does the President have the authority to abolish the death penalty?**

Response: No. Congress passed the Federal Death Penalty Act in 1994, which is codified at 18 U.S.C. § 3591 *et seq.* The President cannot unilaterally repeal a statute.

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

Response: The Supreme Court concluded that the plaintiffs were likely to prevail on their claim that the Center for Disease Control (CDC) exceeded its statutory authority under the Public Health Service Act when it instituted a nationwide eviction moratorium in response to COVID-19. *Alabama Ass'n of Realtors v. Dep't of Health & Human Servs.*, 141 S. Ct. 2485, 2487 (2021). In reaching its holding, the Court noted that the Public Health Service Act provision used by the CDC "has rarely been invoked—and never before to justify an eviction moratorium." *Id.* at 2487. The Court concluded that the moratorium put landlords at risk of irreparable harm and that the government's interests had decreased over time since the stay was granted. *Id.* at 2489–90. Moreover, for a federally-imposed eviction moratorium to continue, Congress must clearly authorize it. *Id.* at 2489.

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

Response: Typically, no. As a prosecutor, I am mindful to seek or file criminal charges only if I reasonably believe that the charges are supported by probable cause, that admissible evidence will be sufficient to support a conviction beyond a reasonable doubt, and that the decision to charge is in the interests of justice. Except for statements that are necessary to inform the public of the nature and extent of the action and that serve a legitimate law enforcement purpose, I refrain from making comments that have a substantial likelihood of heightening public condemnation of the accused.