Senator Dick Durbin
Chair, Senate Judiciary Committee
Written Questions for Ryan Young Park
Nominee to be United States Circuit Judge for the Fourth Circuit
August 7, 2024

1. **You have served as the Solicitor General of North Carolina since 2020, previously serving as Deputy Solicitor General of North Carolina. Before that, you worked in private practice and at the U.S. Department of State. You have also served as a law clerk at every level of the federal judiciary—district court, court of appeals, and the Supreme Court of the United States.**

    a. **How have your experiences as a law clerk informed your understanding of the role of a judge, and how does that differ from the role of an advocate?**

    Response: I was incredibly fortunate to have had the opportunity to clerk at every level of the federal judiciary in the years after graduating from law school. These years served as a second legal education for me, and provided me with a great appreciation and reverence for the federal courts. Clerking also provided wonderful role models who taught me many lessons that I would take with me if confirmed. I learned that judges have an obligation to approach every single case with utmost seriousness, out of respect for the parties and the judicial system. I learned that judges need to be diligent, and thoroughly study the parties' submissions, the record, and the applicable law. And I learned that judges need approach every case with an open mind, set aside their personal views, and decide cases based solely on the record and the law.

    Following my clerkships, I learned that the role of an advocate is very different. In my time at a large law firm and as a senior appellate lawyer in state government, I learned that an advocate's role is to make the best arguments in support of his client's position, consistent with applicable law. Our adversarial system of justice works most effectively when both sides are represented by able, zealous advocates who make arguments to a neutral and objective judge.

    In my experience, however, one commonality between an advocate and a judge is the responsibility to set aside any personal views one might hold and unhesitatingly perform one's role within our adversarial system. As Solicitor General of North Carolina, for example, I have zealously defended the positions of clients from both major political parties, including in dozens of cases where I have defended laws enacted by the Republican-controlled North Carolina General Assembly or policies adopted by elected Republican officials. I have done so in many cases even when those positions were previously opposed by my own boss, Attorney General Stein. If confirmed, I would adopt a similar mindset of putting aside any personal views I may have and decide cases fairly and objectively, without fear or favor to any party who appears before me.

b. How has your legal experience prepared you to serve on the U.S. Court of Appeals for the Fourth Circuit?

Response: In addition to my clerkships, I have been fortunate to gain extensive experience litigating in the federal and state appellate courts. I have argued over thirty appeals, including ten in the federal courts of appeals and two in the Supreme Court. I have also played a lead role in drafting well over one hundred appellate briefs, both in private practice and in government. These appeals have involved a range of issues of both civil and criminal law. As North Carolina's Solicitor General, I have also had supervisory responsibility over all of the State's civil appeals—from pro se habeas cases to complex constitutional disputes. These experiences have provided me broad exposure to, and ready familiarity with, the types of cases and issues that are decided by a Fourth Circuit judge.

As a state solicitor general, I have also had the opportunity to lead numerous bipartisan efforts among states in areas of common interest. As I previously mentioned to the committee, every single multistate effort I have ever led was bipartisan. For example, I worked in a continuing partnership over several years with Indiana's then-Solicitor General Tom Fisher to lead amicus briefs supporting state and federal laws against robocallers. I also led a bipartisan coalition of 27 states to defend state authority to take action against patent trolls. And in a final example that should be familiar to you given your bipartisan brief with Senators Whitehouse and Hawley making similar points, I led a bipartisan coalition of 25 states in *In re Bestwall* to convey our common interest in preventing solvent companies from abusing the bankruptcy process to escape liability for harming their citizens. I am very pleased that a broad, bipartisan group of state solicitors general have submitted a letter supporting my nomination. If confirmed, I would continue to maintain a strong commitment to building bridges with judges and others in the legal community who have different perspectives on the law and do my best to reach consensus in service of our common commitment to the rule of the law.

Senator Lindsey Graham, Ranking Member
Questions for the Record
Ryan Young Park
Nominee to be United States Circuit Judge for the Fourth Circuit

1. **In 2016, you co-wrote an article for the Washington Post titled "[t]he criticism of Ruth Bader Ginsburg ignores much of the nation's history" In this article you claim Justice Ginsburg's statements calling Trump a "*faker*" with "*no consistency*" were "not necessarily improper."**
    a. **Do you take the same view of Martha-Ann Alito's decision to fly flags outside her family home and vacation house?**

    Response: The First Amendment guarantees to all Americans the right to express themselves, including through the flying of flags. *See Johnson v. Texas*, 491 U.S. 397, 405 (1989) ("we have had little difficulty identifying an expressive element in conduct relating to flags"). I am not aware of any law, ethical rule, or judicial decision that would bar the spouse of a Supreme Court Justice from expressing herself through the flying of flags.

2. **In the same 2016 Washington Post article you accuse Trump of "*overt racism*" and *"disdain for the rule of law and our constitutional system.*"**
    a. **Do you stand over these comments?**

    Response: No, I do not. I co-authored this article in an ill-advised attempt to defend the Supreme Court Justice for whom I clerked from public criticism. The decision to co-write the article was a mistake, as were the words and arguments used in the article. I regret the decision to co-author it and do not stand by it today. As a judicial nominee, I am now bound by the Code of Conduct for United States Judges, which bars me from engaging in political activity, including making public comments on political candidates. If confirmed, I will scrupulously adhere to this rule and all other ethical rules in the Code of Conduct.

3. **In the same 2016 article you wrote:**

    > *Speaking only for ourselves, we believe the nation is facing a unique constitutional moment. A major political party will soon choose a presidential nominee whose election — if he governs as he campaigns — could feasibly precipitate a constitutional crisis of a magnitude the 83-year-old justice has not witnessed in her lifetime. We agree that justices should rarely voice their political opinions on a particular candidate or election. But when a justice does decide to speak, we should listen.*

    a. **Do you stand over these comments?**

    Response: Please see my response to question 2 above.

4. **In 2020, you defended North Carolina's restrictions that banned indoor Church gatherings over 10 people while not banning other indoor activities of more than 10 people. The District Court struck down the restrictions writing "[t]here is no pandemic exception to the Constitution of the United States."**
    a. **Do you believe there is a pandemic exception to the Constitution?**

    Response: No, I do not. Nor have I ever argued that the Constitution does not apply during a pandemic. In May 2020, the day this case was filed, I was invited to participate in an expedited hearing to be held the next day to defend an executive order issued by the Governor. During oral argument, I repeatedly and emphatically made clear the Governor's position that, under the challenged executive order, religious congregations could convene indoors without limitation "if they believe in good faith that it is not possible" to convene outdoors, including based on practical limitations such as the "weather" or logistical concerns such as "space constraints outdoors." I further made clear that, under the Governor's order, "worship [wa]s an exempted activity from the mass gathering ban" and that *all* exempted activities—both religious and non-religious—were subject to "the same rules."

    The district court held that the Governor's order was not narrowly tailored and issued a temporary restraining order. In consultation with my office, the Governor chose not to appeal this order and instead issued a new executive order completely exempting all religious activities from any pandemic-related limitations. This decision was made at a time, early in the pandemic, when the majority of states—led by members of both major political parties—imposed restrictions that were similar or more-restrictive than the challenged executive order, and when many appellate courts, including the Supreme Court, had declined to enjoin those orders. If confirmed, I will faithfully follow Supreme Court and Fourth Circuit precedent in this and any other area of law.

5. **How much time had you spent in North Carolina prior to beginning your work with the North Carolina Department of Justice?**

    Response: My mother first immigrated to this country in the 1970s to attend East Carolina University in Greenville, North Carolina. My parents later moved to Minnesota, where I was raised. In the early 2000s, my older sister moved to North Carolina to take a position at the University of North Carolina. Soon thereafter, my younger sister relocated to North Carolina as well and worked in the public school system. Because of these close family connections, I had visited North Carolina at least dozens of times before deciding to relocate there, including for extended periods over many family holidays. Like many of the roughly five million North Carolinians who were born out-of-state, making up nearly half the State's population, I chose to move to North Carolina because it is a wonderful place to live and raise a family. The North Carolina Department of Justice was one of several employers in North Carolina to which I applied after my wife and I decided to relocate there. Since moving to North Carolina, I have become deeply involved in the State's legal community. For example, I have taught North Carolina Constitutional Law at the University of North Carolina School of Law for several years, I serve on the North Carolina State Bar Association's Appellate Rules Committee, and I was appointed by the Fourth Circuit's North Carolina-based judges to serve as the State's

sole representative on the court's Advisory Committee on Rules and Procedure.

6. **Your name appears on the complaint in *State of Washington v. United States of America* (filed 2018). In this case, you challenged the Trump Administration's practice of refusing entry to asylum applicants at the southern border as well as its "policy of . . . separating families who enter the country along our Southwestern border." Your complaint requests the Court "declare the practice of refusing to accept asylum seekers who present at Southwestern points of entry and the related Policy of family separation illegal and order Defendants to stop implementing them immediately."**
    a. **Do you believe "the practice of refusing to accept asylum seekers who present at Southwestern points of entry" is illegal?**

    Response: I signed this complaint as a lawyer representing the interests of a client, the State of North Carolina acting through the Attorney General. In all the cases that I have handled as an advocate, I represented my client's position to the best of my ability, consistent with applicable law, without regard to any personal views I might hold. If confirmed, I will faithfully follow binding Supreme Court and Fourth Circuit precedent on this or any other issue that might come before me. My understanding is that the specific issue raised here continues to be the subject of ongoing litigation. As a judicial nominee, I am therefore precluded by the Code of Conduct for United States Judges from commenting on it.

7. **At the American Constitution Society's 2019 "Progressive Federalism Panel" you explained why you joined the Solicitor General's office:**

    > *After the election I think I hadn't specifically thought I would go work for the Attorney General of North Carolina, I had wanted to move down there, but that wasn't necessarily . . . the first thing that I had in mind, and it was kind of wrapped up in this national conversation and the role that Attorneys General are playing nationally and with everything that was happening* ***as a progressive lawyer who wanted to make a difference I thought that was a really unique place to be working for a new progressive Attorney General****.* (Emphasis added).

    a. **Please define what you meant by "progressive" in this context.**

    Response: In the context of that panel, I defined "progressive" to mean a state government lawyer who works on issues where "Attorneys General come together to protect people" and preserve their rights. In describing the Attorney General in that way, I offered two examples of his work: the 50-state effort to combat the opioid crisis by holding the manufacturers and distributors of opioids accountable for their roles in fueling the crisis, and the multistate effort among the States on the Atlantic Coast to prevent offshore drilling off our coast. Both of those efforts were bipartisan and involved working in partnership with South Carolina's Attorney General.

8. **In the same 2019 speech, after touching on how Democratic AG's were using federalism as a method to challenge the Trump administration, you stated:**

> *One concern that we all should have is that this kind of federalism isn't necessarily progressive . . . it's a function of what's going on in the world right now . . . even in this era it's not only the Democratic Attorney Generals that doing it, the ACA lawsuit continues, it continues to be a group of red states led by Texas that is challenging the Constitutionality of the Affordable Care Act.*

a. **Please define what you meant by "progressive" in this context.**

Response: As mentioned in my response to question 7a, in the context of that panel, I defined "progressive" to mean a state government lawyer who works on issues where "Attorneys General come together to protect people" and preserve their rights. I further cautioned the audience against "politics through lawsuits." On the lawsuit in question, the Attorney General of Texas has stated that he initiated the lawsuit based on his view that it was unlawful for the federal government to order private citizens to purchase health insurance. In that respect, the lawsuit was designed to protect his citizens' rights and therefore aligns with how I defined progressive federalism in the context of that panel.

9. **In the same 2019 speech you explained when you believe Federalism is legitimate:**

> *When you are in one of these offices you're a core player and it's exciting but you have to step back and think you know, is this necessarily good when the federal administration is the one that you support, and if you can't come to those kind of neutral principals . . . you* ***start to question whether the system as a whole is good****. I think, I guess my answer to that question, and again speaking for myself is it's* ***kind of similar to the answer that you give for judicial review in the first place right which is that you can believe in progressive federalism when its rights enhancing and then when*** *there are kind of the famous footnote, the discreet insular minorities footnote, right that when* ***. . . this kind of litigation is used to take away rights and to harm disadvantaged groups further then maybe it's not legitimate.*** *(Emphasis added).*

a. **Do you still agree with this statement?**

Response: Federalism is a bedrock feature of our constitutional system and is therefore inherently legitimate. As noted above, in the context of that panel, I defined "progressive federalism" to mean when "Attorneys General come together to protect people" and preserve their rights. I was

describing a form of litigation by state Attorneys General, not federalism more broadly. As an advocate representing state-government clients, I have frequently made federalism-based arguments, including in a case where I prevailed in asserting the defense of state sovereign immunity in the Supreme Court. *See Allen v. Cooper*, 589 U.S. 248 (2020). If confirmed, I would faithfully apply binding precedent of the Supreme Court and Fourth Circuit without regard to any personal views I might hold.

10. **Please explain the timeline of your involvement in *Students for Fair Admissions, Inc. v. University of North Carolina*.**

    Response: I had minimal involvement in this case at the trial level. At the University of North Carolina's request, I assisted with drafting a few pre-trial motions in limine, and also provided limited feedback on post-trial submissions. When the appeal was filed, the University's General Counsel requested that I serve as lead counsel for the appeal. Consistent with my practice of never declining a request to represent a state official or agency for any reason other than workload-related concerns, I agreed. After the Supreme Court's decision, I continued to assist the University to ensure that its admissions policy fully complied with the decision.

11. **On May 31, 2023 you signed a letter supporting Judge Loren L. AliKhan's nomination to serve as a District Judge on the U.S. District Court for the District of Columbia. Why did you sign this letter?**

    Response: I worked with Judge AliKhan on multistate initiatives when she served as Solicitor General of the District of Columbia. Many of these efforts were bipartisan. For example, the letter discusses a bipartisan brief of 39 Attorneys General, including North Carolina's, that Judge AliKhan led in the Minnesota Supreme Court defending the common-interest doctrine in the context of multistate cooperation. Based on my interaction with Judge AliKhan in this and other cases, I thought she was highly qualified to serve as a federal judge and I therefore agreed to join a broadly bipartisan letter of current and former state solicitors general conveying that view.

12. **In 2010, you authored an article "Exploring the Curious Lenience of International Criminal Law: Case Comment on Case 001 of the Extraordinary Chambers in the Courts of Cambodia." Your article compares the "lenience" of international law to the "excessively punitive sentencing" of U.S. law. In this article you describe California's "three-strikes" law as "draconian" you also wrote "the injustices emanating from the American approach to punishment counsel against too close a proximity between popular sentiment and criminal sentencing." (Emphasis added).**

    a. **Do you still believe the three strikes-law is draconian?**

Response: This article's thesis is that international criminal sentences are excessively lenient. As I stated in the article, there is a "disturbing tendency of international criminal tribunals to issue sentences of pedestrian severity to the world's very worst criminals." The article uses the facts of *Lockyer v. Andrade*, 538 U.S. 63 (2003), to emphasize that lenience in comparison to the American criminal justice system. In *Andrade*, the defendant was convicted on two counts of petty theft for shoplifting videotapes from a K-Mart. Under California's three-strikes law, he was sentenced to two consecutive sentences of 25 years to life, meaning he will serve at least 50 years in prison for a minor, nonviolent offense. *Id.* at 68. In the referenced article, I compared that lengthy sentence to that of a Khmer Rouge leader who was initially sentenced by an international criminal court to 19 years in prison for overseeing the torture, enslavement, and murder of as many as 16,000 people.

Black's Law Dictionary defines "draconian" as "a very harsh or severe law." Black's Law Dictionary (11th ed. 2019). It is broadly accepted that three-strikes laws like California's can be very severe, but are still constitutionally permissible. For example, Justice Scalia wrote in *Harmelin v. Michigan*, that the "[s]evere, mandatory penalties" required by a similar state recidivism law "may be cruel" under the Eighth Amendment but "are not unusual in the constitutional sense." 501 U.S. 997, 994 (1991). In a controlling concurrence in that case, Justice Kennedy wrote: "A penalty as severe and unforgiving as the one imposed here would make this a most difficult and troubling case for any judicial officer." *Id.* at 1008. But Justice Kennedy likewise concluded that, despite its severity, the law in question was constitutional. These views are consistent with the referenced article, which never suggested that three-strikes law violate the Eighth Amendment or any other constitutional provision.

In addition, I have personally handled over a dozen criminal appeals for the State of North Carolina, including in cases involving the most-serious crimes where the defendants were sentenced to lengthy prison terms, including for life without parole. I have also worked in a supervisory capacity in several criminal matters where the defendant was sentenced to death. If confirmed, I would faithfully follow Supreme Court and Fourth Circuit precedent on criminal sentencing.

b. **Do you still believe "the injustices emanating from the American approach to punishment counsel against too close a proximity between popular sentiment and criminal sentencing"?**

Response: In our constitutional system, Congress and state legislatures have broad authority to establish criminal sentencing practices and policies, subject to constitutional constraints such as the Eighth Amendment's bar on cruel and unusual punishments. Sentencing practices are therefore principally a matter of policy for legislatures to establish and for courts to faithfully apply. As a judicial nominee, I am precluded from commenting on matters of policy. However, as noted, the Supreme Court has made clear that three-strikes laws are constitutional. If confirmed, I would faithfully follow binding Supreme Court and Fourth Circuit precedents on criminal sentencing.

13. **In a speech to the "Multistate Tax Commission" you highlighted your work on a specific case during his clerkship:**

> *[T]he true, unquestioned dog of the term was United States v. Woods. This case involved an incredibly complex series of transactions entered into by the billionaire Red McCombs. I actually volunteered to take on this case, to the great surprise of my co-clerks. McCombs had owned my hometown football team, the Minnesota Vikings, and I was thought it might be fun to learn a bit about he was up to. Over the next few months, I came to really really really regret that decision.*
>
> *Basically, the transactions were known as an "offsetting option tax shelter" and was designed to create tens of millions in paper losses, and thus reduce the McCombs' taxable income. The IRS determined that these transactions lacked economic substance – meaning that they were effectively sham transactions whose whole purpose was tax avoidance. And the case involved whether the district court had jurisdiction to force McCombs and his employee (the Woods in the case) to pay a valuation misstatement penalty.*
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> *Now, of all the many cases I've discussed so far, this might be the only case that I now think of as a "pure" tax case. It involved a series of financial transactions that were designed to be as complicated as possible by sophisticated lawyers who specialized in creating tax shelters. It also required parsing and applying technical statutory language and dense Treasury regulations and informal IRS notices and guidance. That is, this case did not merely require the court to decide whether specialized tax regulations applied at all—after which everyone agreed what the answer would be if they did—like the Sarmiento case I discussed earlier.*
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> *That is a more routine task that appellate courts take on all of the time, across a wide range of subject matters. No, this case required the justices to actually immerse themselves in the specialized tax world itself and apply and understand those specialized tax rules. So, to put it bluntly, this simple, uncontroversial tax case caused much of the court to freak out. No one could figure out what was going on. The case was one of the first to be argued that term, so the assigned clerks started having regular meetings over the summer to discuss the transactions and the regulations.*
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> *Even one of Justice Kagan's clerks, who was a math genius who won every math award possible as an undergraduate at Harvard before turning to the law instead of getting a PhD in math, was struggling to understand how to value the adjusted basis of the partnership interests, which was key to determining whether the transaction triggered a penalty.*

We all thought that if this guy can't figure this out, how the heck are we supposed to?

When I first met with Justice Ginsburg to discuss the case, she turned to me and gave a wry smile. She said that Marty, her husband who was a celebrated tax lawyer, would have loved the case if he were still alive. She went on that she couldn't "for the life of myself" understand what the case was about, and that it was my job to explain it to her – in a memo that could under no circumstances be longer than 25 pages, double spaced.

I dove into the assignment with gusto, working nearly nonstop on the memo for several weeks. My main strategy was to come up with commonsense analogies that would explain every subpart of the transaction, and also how they all fit together. And then, for the legal parts of the case, to come up with analogies to other areas of law that the Justice was intuitively familiar with – things like Equal Protection law, administrative review, or civil procedure – to explain how the tax concepts operated in practice.

Now Justice Ginsburg was a famously demanding boss, and I'd been warned to expect a heavy red pen. After she read the memo, we discussed the case again and she told me that she understood the case now. I'm pretty sure that's the highest form of flattery a judge can give her clerk.

a. **Did Justice Ginsburg give you permission to discuss this case?**

Response: I spoke about this case after Justice Ginsburg passed away. I therefore did not have the opportunity to discuss these particular comments with her. When she was alive, Justice Ginsburg encouraged me to speak and write publicly about my experiences clerking for her.

i. **If no, was discussing this case a breach of confidentiality?**

Response: It is common and appropriate for former Supreme Court clerks to discuss their experiences as clerks, so long as they do not reveal confidential information about the Justices' deliberations in a particular case. *See, e.g.*, Ted Cruz, *From Doubles Tennis to Internet Porn: My year as a Supreme Court Clerk*, Politico (June 29, 2015) (sharing light-hearted anecdotes about the author's year as a clerk, including his interactions with Justice O'Connor as the Court was deliberating over a pornography case); John Duffy, *Tribute: Justice Scalia's hapless law clerk*, SCOTUSblog (March 6, 2016) (sharing a light-hearted anecdote about working with Justice Scalia as a clerk on a technical tax case).

Like these examples, I do not believe anything about my comments conveyed confidential information about the Justices' deliberations or were otherwise improper. In my comments, I discussed an uncontroversial tax case from a decade earlier that the Court decided unanimously. I shared a light-hearted anecdote about the case to emphasize that the underlying financial transaction was difficult to understand. That fact was a matter of public record: At oral argument, for example, Justice Breyer stated of the transaction: "I understand how someone could be confused, and I am genuinely confused. I have read this several times." Oral arg. Tr. 34:4-6, *United States v. Woods*, 12-562 (S. Ct.); *see also id.* 46:25-47:1 (Justice Sotomayor stating "I'm a little confused"). The question presented in the case was: "whether the penalty for tax underpayments attributable to valuation misstatements, 26 U. S. C. §6662(b)(3), is applicable to an underpayment resulting from a basis-inflating transaction subsequently disregarded for lack of economic substance." *United States v. Woods*, 571 U.S. 31 (2013).

In appropriate circumstances, I believe that it benefits the legal system when judges and clerks speak publicly about the working of the federal courts. I also strongly believe that the confidentiality of judicial deliberations is of utmost importance. If confirmed, I will scrupulously adhere to applicable ethical rules on confidentiality.

14. **Please explain your involvement in *Berger et al. v. North Carolina State Conference of the NAACP*.**

a. **Please explain this cases factual and procedural history.**

Response: This case involves a constitutional challenge to a voter ID law enacted by the North Carolina General Assembly. Since the lawsuit was filed, the Attorney General has been representing the Board of Elections in defense of the law. The state's legislative leaders sought to intervene to defend the law alongside the Attorney General, claiming that the Department of Justice lawyers should have developed the record further at the preliminary injunction stage. The district denied the intervention motion, and also entered a preliminary injunction against the law. I had no role in this case at the trial level.

The Attorney General appealed the preliminary injunction; the legislators also appealed the denial of their motion to intervene. Both appeals were successful.

As mentioned, the Attorney General prevailed in the merits appeal. That appeal was decided based on the record developed by the Attorney General in the trial court, thus negating the legislative leaders' concern that the Department of Justice's trial attorneys had not adequately developed the record below. *N.C. State Conf. of the NAACP v. Raymond*, 981 F.3d 295, 311 (4th Cir. 2020).

In the intervention appeal, a panel of the Fourth Circuit held that the legislative leaders should have been allowed to intervene. The Board filed a petition to the en banc Fourth Circuit, and later a brief to the Supreme Court. The en banc Fourth Circuit affirmed the district court's decision to deny intervention, but the Supreme Court reversed and held that the legislative leaders must be allowed to intervene.

Throughout the litigation, the Attorney General and the Board maintained the consistent position that they did not oppose the intervention of the legislative leaders, but argued that any decision on intervention should reflect that the Board and the Attorney General were adequately defending the law.

For example, the brief that I submitted to the Supreme Court repeatedly agreed with the legislative leaders that intervention was likely appropriate. It explained that the leaders "often are granted permissive intervention in similar cases under Rule 24(b) [of the Rules of Civil Procedure], and State Respondents do not oppose such relief here." State Resp. Br. at 55, *Berger v. N.C. State Conf. of the NAACP*, No. 21-248 (S. Ct.). As I explained, that rule allows a federal court to "permit anyone to intervene," if they satisfy certain requirements. The brief stated explicitly that the Board and Attorney General "have never disputed that [the leaders] satisfy these threshold requirements." *Id.* The brief went on to "reiterate that [the Board and Attorney General] do not oppose, and have never opposed, allowing [the legislative leaders] to intervene in this case" and made clear that they "have no doubt that they could work cooperatively with [the leaders] to defend [the voter ID law] just as they are currently doing in many other cases." *Id.* Notably, in its decision to allow intervention, the Supreme Court relied on the fact that the Board and Attorney General made this explicit "concession that the legislative leaders *may* intervene permissively under Rule 24(b)." *Berger v. N.C. State Conf. of the NAACP* 597 U.S. 179, 197 (2022).

In addition, the brief that I submitted to the Supreme Court emphasized that, regardless of how the Court ruled on intervention, the Attorney General and Board of Elections "stand ready to mount a vigorous defense of the challenged law" and "are confident that, no matter what happens in this [intervention] appeal, they will ultimately prevail in proving that [the challenged law] is fully consistent with federal law." State Resp. Br. at 1-2; *see also id.* 2-5, 13-16 (explaining at length the substantive reasons why the voter ID law was lawful).

The case is now back on remand in the district court—where lawyers from both the North Carolina Department of Justice and the legislative leaders recently defended the law alongside one another at trial. The case remains pending in the trial court.

b. **Your en banc petition before the Fourth Circuit stated the following:**

> *This appeal raises an issue of exceptional importance: whether state legislators can alter the federal procedural rules that govern their participation in lawsuits in federal court. Breaking with this Court's*

precedent, the panel in this case held that state legislators can alter those rules.

That precedent holds that when state executive officials are defending lawsuits, other parties cannot intervene-by-right without making a strong showing of inadequate representation. The panel, however, held that legislators can circumvent this federal procedural burden by enacting a statute that purports to allow them to represent the State's interests in court.
The panel therefore held that the district court erred by declining to allow the General Assembly's leaders to intervene, even though the members of North Carolina's State Board of Elections, represented by the State's Attorney General, are defending this lawsuit. As the dissent observed, the panel appears to be the first court that has ever held that a district court's denial of intervention to state legislators can be error when executive officials are defending a lawsuit. The panel's unprecedented holding warrants en banc review. (Cleaned up).

i. What role did you play in the decision to file this en banc petition?

Response: The decision to file the petition was made by the Attorney General. I was one of several attorneys he consulted in making this decision. As discussed above, the Board and the Attorney General never opposed the legislative leaders' intervention in this case. They instead argued that any decision on intervention should reflect that the Board and Attorney General were adequately defending the law.

c. **In his majority (8-1) decision Justice Gorsuch wrote:**

Setting aside the lower courts' erroneous presumptions, the proper resolution of today's case follows quickly. Casting aspersions on no one, this litigation illustrates how divided state governments sometimes warrant participation by multiple state officials in federal court. Recall just some of the facts of this case. When confronted with a motion for a preliminary injunction, the Board declined to offer expert-witness affidavits in support of S. B. 824, even though its opponent offered many and the legislative leaders sought to supplement the record with their own. After the District Court issued its (ultimately overturned) injunction, the Board declined to seek a stay. That tactical choice, motivated by the Board's overriding concern for stability and certainty, meant that the State could not enforce its new law during a statewide election. Throughout, Board members have been appointed and potentially removable by a Governor who vetoed S. B. 824 and who filed his own

briefs in this litigation calling the law "unconstitutional" and arguing that it "should never go into effect."

And at all times, the Board has been represented by an attorney general who, though no doubt a vigorous advocate for his clients' interests, is also an elected official who may feel allegiance to the voting public or share the Board's administrative concerns. The legislative leaders seek to give voice to a different perspective. Their "primary objective" is not clarifying which law applies. They are not burdened by misgivings about the law's wisdom.
If allowed to intervene, the legislative leaders say, they will focus on defending the law vigorously on the merits without an eye to crosscutting administrative concerns. And, they add, the differences between their interest and the Board's in this case demonstrate why state law empowers them to participate in litigation over the validity of state legislation—alive as it is to the possibility that different branches of government may seek to vindicate different and valuable state interests. Perhaps recognizing all this, the Fourth Circuit itself allowed the legislative leaders to intervene in the appeal from the District Court's preliminary injunction ruling. The same result should follow here.

i. **Were you "burdened by misgivings about the law's wisdom" during this litigation?**

Response: Absolutely not. In this case, as in the dozens of others in which I have defended state statutes enacted by the Republican-controlled North Carolina General Assembly or defended the policy positions of elected officials of both major political parties, I have fulfilled my duty as an advocate to make the best possible arguments in support of my client's position, without regard to any personal views I might hold.

15. **You are involved in *Hoke County Board of Education v. State*.**

a. **What is your involvement in this case?**

Response: In 2022, I was asked to represent the State of North Carolina in this case on appeal. I was not lead counsel and did not have decision-making authority. On appeal, I assisted in the briefing and presented one of the oral arguments in the North Carolina Supreme Court. I did not represent the State in proceedings before the trial court.

b. **Please explain the factual and procedural history of this case.**

Response: This case relates to a long-running state constitutional dispute over public school funding in North Carolina. Nearly every state in the nation has confronted litigation of this kind. *See, e.g.*, *William Penn Sch. Dist. v. Pennsylvania Dep't of Educ.*, 294 A.3d 537 (Pa. Commw. Ct. 2023) (holding that Pennsylvania's funding scheme for public education violates the state constitution).

Several decades ago, the plaintiffs in this case sued the State of North Carolina, claiming that the State was violating its obligation under the state constitution "to guard and maintain" the people's "right to the privilege of education." N.C. Const. art. I § 15. In 1997, the North Carolina Supreme Court unanimously held that the State "has the duty of providing the children of every school district with access to a sound basic education." *Leandro v. State*, 346 N.C. 336, 353 (1997). After remand for further proceedings, the court unanimously affirmed the trial court's ruling that there was an ongoing failure by the State to meet that duty, at least with regard to the students in one low-income county. *Hoke Cnty. Bd. of Educ. v. State*, 358 N.C. 605, 642 (2004). In 2021, after extended further proceedings, the trial court ordered the State to implement a concrete and detailed statewide remedy for the ongoing constitutional violation. That remedy required the expenditure of billions of dollars in additional funds on public education. After the North Carolina General Assembly declined to appropriate the funds necessary to comply with the order, the trial court ordered the State to transfer the required funds from existing state-held accounts. The legislative leaders intervened and appealed the transfer order, arguing among other things that the judicial branch lacked authority under the state constitution to order the appropriation of funds to remedy a constitutional violation.

In 2022, the North Carolina Supreme Court affirmed. It held that "the State may not indefinitely violate the constitutional rights of North Carolina schoolchildren" and that the state constitution "empowers the judicial branch with inherent authority to address constitutional violations through equitable remedies." *Hoke Cnty. Bd. of Educ. v. State*, 382 N.C. 386, 390 (2004). In 2023, however, the North Carolina Supreme Court granted a motion to reinstate a "writ of prohibition" barring the trial court from transferring the state funds in question. *Hoke Cnty. Bd. of Educ. v. State*, 384 N.C. 8, 9, 883 S.E.2d 480, 481 (2023). In a subsequent appeal, the court then considered briefing and argument on whether to reconsider the 2022 decision affirming the trial court's order to transfer the funds. That appeal remains pending.

16. **You were involved in *Wise v. Circosta, Moore v. Circosta*.**

a. **What was your involvement in this case?**

Response: After the State Board of Elections was sued in these cases, I was asked to represent them. I led the team of lawyers that briefed these matters in the Fourth Circuit and Supreme Court. I had no role in the decision-making process that led to the Board's challenged actions.

b. **Please explain the factual and procedural history of this case.**

Response: The North Carolina Alliance for Retired Americans and individual voters sued the State Board of Elections challenging the state's requirement that mail-in ballots that were postmarked by the election-day deadline be received within three days of election day. They claimed that difficulties associated with the COVID-19 pandemic, including a slowdown in mail delivery, made the three-day deadline unlawful under state law. The Board—a bipartisan, 5-member body—voted unanimously to extend the receipt deadline until nine days after the election, and settle the lawsuit. A state trial court entered a consent judgment extending the deadline, holding that the Board had statutory authority under state law to enter the rules change. In two parallel cases, the state's legislative leaders sued in federal court seeking to block the change. A district court denied the leaders' motion for a preliminary injunction. The leaders then filed an emergency motion for an injunction pending appeal. The en banc Fourth Circuit denied the motion by a 12-3 margin. The legislative leaders then filed emergency applications for an injunction pending appeal in the Supreme Court. The Court denied the applications.

17. **You were involved in *Ohio Democratic Party v. Donald J Trump for President*.**

a. **What was your involvement in this case?**

Response: To the best of my recollection, I spent at most a few hours on this case over the course of a single evening. On the evening that the client filed an emergency application to the Supreme Court, a colleague at my law firm asked me to review the application because I had recently clerked on the Court. I reviewed the application and provided limited feedback. I had no role in this case before or after this time.

b. **Please explain the factual and procedural history of this case.**

Response: In 2016, the Ohio Democratic Party filed a lawsuit against the presidential campaign of Donald Trump seeking an order enjoining the campaign from engaging in what the plaintiff alleged to be voter intimidation. The district court held an evidentiary hearing and entered a temporary restraining order that enjoined the campaign from "engaging in voter intimidation activity." The campaign sought a stay of the TRO in the Sixth Circuit. It disclaimed any intent to engage in voter intimidation and explained that voter intimidation was already illegal under Ohio law. The Sixth Circuit granted a stay of the TRO. The plaintiff filed an emergency application in the Supreme Court seeking to vacate the stay, arguing that the Sixth Circuit had followed inadequate procedures in issuing the stay. The application was denied.

18. **Please explain the factual background of *Guskiewicz v. DTH Media Corporation*.**

Response: This case involved the interaction between North Carolina state public records law and the Family Educational Rights and Privacy Act (FERPA). The plaintiffs were

news organizations that sought records held by the University of North Carolina at Chapel Hill relating to students who had been held responsible for sexual misconduct by the university's internal disciplinary process. The University conceded that these records were subject to disclosure under state public records law, but argued that FERPA preempted that state-law requirement. The North Carolina Supreme Court acknowledged that the University had authority to withhold disclosure of the records under FERPA, but held that state public records law controlled and ordered the records disclosed. The University filed a petition for a writ of certiorari in the Supreme Court. The petition was denied.

Both in the North Carolina Supreme Court and the Supreme Court, a number of victims-rights organizations filed briefs supporting the University's position. For example, in the Supreme Court, the Victim Rights Law Center and the North Carolina Coalition Against Domestic Violence filed an amicus brief arguing that the decision below "threaten[e]d to exacerbate the problems of sexual assault" on college campuses because "the identity of victims of sexual violence could reasonably be determined by disclosure of the names of disciplined students" and "if universities cannot ensure confidentiality, students may stop reporting sexual violence."

a. **Please explain your involvement in this case.**

Response: I first became involved in this case after the North Carolina Supreme Court issued its decision. After the decision, the University requested that I represent it in filing a petition for a writ of certiorari in the Supreme Court. The petition was denied.

19. **In 2007, you wrote an article titled "*Pedophilia, the American way*" for "The Guardian."**

a. **Why did you write this article?**

Response: I have long had an interest in the best policy solutions for preventing child abuse, including child sexual abuse. I wrote this article while I was living in South Korea on a Fulbright Fellowship and had observed that South Korea and other countries were looking to policy solutions adopted in the United States to address the problem of child sexual abuse. The article's overarching thesis is that other countries should consider following the American practice of adopting "Jessica's Laws" that impose lengthy mandatory minimum sentences for persons convicted of sexually abusing children. As I wrote, "the most simple, and only categorically effective, way to prevent recidivism" among child sex offenders is "longer sentences." I had no role in selecting the article's title.

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

Response: Yes.

21. **Are you currently, or have you ever been, a citizen of another country?**

Response: No.

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.**

22. **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.

23. **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.

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

Response: The Constitution is a domestic document. If confirmed, I would be guided by the text, structure, and history of the Constitution, as well as precedents of the Supreme Court and Fourth Circuit in interpreting the Constitution. For example, the Supreme Court has considered pre-founding English law in interpreting the Second Amendment. *See New York State Rifle & Pistol Association v. Bruen*, 597 U.S. 1, 42-45 (2022).

25. **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 strongly disagree with this statement. Judges should decide cases based on the record and the applicable legal authorities, without regard to any personal views they might hold.

26. **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. If confirmed, I would interpret and apply U.S. law in accordance with Supreme Court and Fourth Circuit precedent.

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

Response: Prosecutorial discretion refers to an individual decision by an executive official on whether to initiate a criminal or civil enforcement matter.

28. **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. A judge should faithfully apply Supreme Court precedent in all cases.

29. **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.

30. **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.

31. **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: Federal statutes provide several ways by which a prisoner in custody under sentence of a federal court may seek relief from a sentence. A prisoner may: (i) file a direct appeal under 28 U.S.C. § 1291; (ii) file a motion to vacate or correct a sentence under 28 U.S.C. § 2255 on the basis the sentence violated the Constitution or federal law, among other grounds; (iii) seek a writ of habeas corpus under 28 U.S.C. § 2241 if a

motion under § 2255 is inadequate; (iv) seek to modify a term of imprisonment under 18 U.S.C. § 3582(c); or (v) seek a presidential pardon or clemency.

32. **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: In these cases, the Supreme Court addressed the use of race as a factor in making student admission decisions at the University of North Carolina and Harvard College. The Supreme Court held that the universities' race-conscious admissions policies did not satisfy strict scrutiny because, among other reasons, student-body diversity was not a sufficiently concrete and measurable objective to constitute a compelling interest. The Court therefore held that those policies violated the Fourteenth Amendment's Equal Protection Clause and Title VI of the Civil Rights Act of 1964. The Court clarified that universities may still "consider[] an applicant's discussion of how race affected his or her life, be it through discrimination, inspiration, or otherwise" but emphasized that "the student must be treated based on his or her experiences as an individual—not on the basis of race." 600 U.S. 181, 231 (2023).

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

    Response: Yes.

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

    Response: As a law clerk, I helped judges screen applications for clerkships and internships and interviewed candidates. As a law firm associate, I interviewed students for summer positions and junior associates for permanent positions. At the North Carolina Department of Justice, I have screened applications and interviewed candidates for internships, fellowships, and permanent positions in my office.

34. **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.

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

    Response: No.

36. **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: No, not to my knowledge.

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.

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

Response: Yes.

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

Response: In *303 Creative LLC v. Elenis*, a wedding website designer claimed that Colorado state antidiscrimination law violated her First Amendment right against compelled speech. Specifically, the designer claimed that she had a First Amendment right not to be forced to create websites conveying messages inconsistent with her belief that marriage should be reserved to unions between one man and one woman. The Supreme Court agreed and held that the First Amendment protected the designer's right not to create websites involving same-sex marriages. 600 U.S. 570, 589 (2023).

39. **In *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 642 (1943), Justice Jackson, writing for the Court, said: "*If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein*."**

Is this a correct statement of the law?

Response: Yes. *See 303 Creative LLC v. Elenis,* 600 U.S. 570, 585-89 (2023).

40. **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: If confirmed, I would address this issue by applying Supreme Court and Fourth Circuit precedent. Under that precedent, a law is content based if it "target[s] speech based on its communicative content," such as "the topic discussed or the idea or message expressed." *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 163 (2015). By contrast, a law is generally content neutral when it regulates merely the time, place, or manner of when speech may take place. *City of Austin v. Reagan Nat'l Advert. of Austin, LLC*, 596 U.S. 61, 62 (2022). But even for facially neutral rules, "[i]f there is evidence that an impermissible purpose or justification underpins a facially content-neutral restriction . . . that restriction may be content based." *Id.* at 76; *see also Reed*, 576 U.S. at 164 (facially neutral law is content based if it "cannot be justified without reference to the content of the regulated speech" or was "adopted by the government because of agreement with the message the speech conveys").

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

Response: Under Supreme Court precedent, true threats are "serious expressions conveying that a speaker means to commit an act of unlawful violence" *Counterman v. Colorado*, 600 U.S. 66, 74 (2023) (internal quotation marks omitted). A defendant must act with at least with recklessness regarding the threatening nature of the communication. *Id.* at 69.

42. **Under Supreme Court and Fourth 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: A question of fact involves "who did what, when or where, how or why." *U.S. Bank Nat'l Ass'n v. Vill. at Lakeridge, LLC*, 583 U.S. 387, 394 (2018). A question of law, by comparison, "require[s] courts to expound on the law, particularly by amplifying or elaborating on a broad legal standard." *Id.* at 396. The Supreme Court has characterized the distinction between questions of fact and law as "elusive," and so the "fact/law distinction at times has turned on a determination that, as a matter of sound administration of justice, one judicial actor is better positioned than another to decide the issue in question." *Miller v. Fenton*, 474 U.S. 104, 114 (1985).

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

Response: Under 18 U.S.C. § 3553(a), Congress has directed federal courts to consider all of these purposes in criminal sentencing. Congress has not directed one purpose to be given greater weight than another. If confirmed, I would follow Supreme Court and Fourth Circuit precedent regarding the sentencing factors and not any personal views I might hold.

44. **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, the Code of Conduct for United States Judges generally precludes me from commenting on the quality of any Supreme Court decision. If confirmed, I would follow all Supreme Court and Fourth Circuit precedent.

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

Response: As a judicial nominee, the Code of Conduct for United States Judges generally precludes me from commenting on the quality of any Fourth Circuit decision. If confirmed, I would follow all Supreme Court and Fourth Circuit precedent.

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

Response: 18 U.S.C. § 1507 provides: "Whoever, with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty, pickets or parades in or near a building housing a court of the United States, or in or near a building or residence occupied or used by such judge, juror, witness, or court officer, or with such intent uses any sound-truck or similar device or resorts to any other demonstration in or near any such building or residence, shall be fined under this title or imprisoned not more than one year, or both."

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

Response: Neither the Supreme Court nor the Fourth Circuit has specifically addressed whether this statute is constitutional. However, in *Cox v. Louisiana*, 379 U.S. 559 (1965), the Supreme Court reviewed and upheld a state statute modeled after 18 U.S.C. § 1507. *Id.* at 561, 564. If confirmed, I would follow Supreme Court and Fourth Circuit precedent in addressing any issue, including the constitutionality of this statute.

48. **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: If confirmed, I would faithfully follow all binding Supreme Court precedent. As a judicial nominee, the Code of Conduct for United States Judges generally precludes me from commenting on the correctness of Supreme Court precedent. But consistent with the practice of prior judicial nominees, I can state

that *Brown v. Board of Education* was correctly decided because it falls within a small category of cases that present issues unlikely to ever come before me.

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

Response: If confirmed, I would faithfully follow all binding Supreme Court precedent. As a judicial nominee, the Code of Conduct for United States Judges generally precludes me from commenting on the correctness of Supreme Court precedent. But consistent with the practice of prior judicial nominees, I can state that *Loving v. Virginia* was correctly decided because it falls within a small category of cases that present issues unlikely to ever come before me.

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

Response: If confirmed, I would faithfully follow all binding Supreme Court precedent. As a judicial nominee, however, the Code of Conduct for United States Judges generally precludes me from commenting on the correctness of Supreme Court precedent.

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

Response: If confirmed, I would faithfully follow all binding Supreme Court precedent. As a judicial nominee, the Code of Conduct for United States Judges generally precludes me from commenting on the correctness of Supreme Court precedent. The Supreme Court overruled *Roe v. Wade* in *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022). If confirmed, I would follow Supreme Court precedent, including *Dobbs*.

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

Response: If confirmed, I would faithfully follow all binding Supreme Court precedent. As a judicial nominee, the Code of Conduct for United States Judges generally precludes me from commenting on the correctness of Supreme Court precedent. The Supreme Court overruled *Planned Parenthood v. Casey* in *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022). If confirmed, I would follow Supreme Court precedent, including *Dobbs*.

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

Response: If confirmed, I would faithfully follow all binding Supreme Court precedent. As a judicial nominee, the Code of Conduct for United States Judges generally precludes me from commenting on the correctness of Supreme Court precedent.

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

Response: If confirmed, I would faithfully follow all binding Supreme Court precedent. As a judicial nominee, the Code of Conduct for United States Judges generally precludes me from commenting on the correctness of Supreme Court precedent.

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

Response: If confirmed, I would faithfully follow all binding Supreme Court precedent. As a judicial nominee, the Code of Conduct for United States Judges generally precludes me from commenting on the correctness of Supreme Court precedent.

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

Response: If confirmed, I would faithfully follow all binding Supreme Court precedent. As a judicial nominee, the Code of Conduct for United States Judges generally precludes me from commenting on the correctness of Supreme Court precedent.

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

Response: If confirmed, I would faithfully follow all binding Supreme Court precedent. As a judicial nominee, the Code of Conduct for United States Judges generally precludes me from commenting on the correctness of Supreme Court precedent.

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

Response: If confirmed, I would faithfully follow all binding Supreme Court precedent. As a judicial nominee, the Code of Conduct for United States Judges generally precludes me from commenting on the correctness of Supreme Court precedent.

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: If confirmed, I would faithfully follow all binding Supreme Court precedent. As a judicial nominee, the Code of Conduct for United States Judges generally precludes me from commenting on the correctness of Supreme Court precedent.

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

Response: If confirmed, I would faithfully follow all binding Supreme Court precedent. As a judicial nominee, the Code of Conduct for United States Judges generally precludes me from commenting on the correctness of Supreme Court precedent.

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

Response: If confirmed, I would follow binding Supreme Court and Fourth Circuit precedent on this or any other issue. On this issue, the Supreme Court has held that "the standard for applying the Second Amendment is as follows: 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." *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. 1, 24 (2022). The Supreme Court clarified in *United States v. Rahimi*, that "the Second Amendment permits more than just those regulations identical to ones that could be found in 1791." 144 S. Ct. 1889, 1897-98 (2024). Instead, "the appropriate analysis involves considering whether the challenged regulation is consistent with the principles that underpin our regulatory tradition." *Id.* at 1898.

50. **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.

51. **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: Yes. In February 2024, I had a brief call with Jake Faleschini and one of his colleagues to discuss the judicial nominating process generally.

52. **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.**

    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.**

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.**

53. **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.

54. **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.

55. **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.

56. **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?**

    Response: No.

    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.

57. **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: Yes. I have been invited to appear on many panels for both the American Constitution Society and the Federalist Society, all of which I have disclosed to the Senate Judiciary Committee.

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: To my knowledge, I am not currently in contact with anyone employed by, or who holds an official position with, the American Constitution Society. As an active appellate lawyer, a large portion of my professional network consists of people who are associated with either the American Constitution Society or the Federalist Society.

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 never been in contact with Russ Feingold. However, I have been invited to appear on many panels for the American Constitution Society and the Federalist Society and have interacted with many people associated with both organizations in that context. Many people in my professional network are also associated with both organizations.

58. **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 January 13, 2024, I was contacted by attorneys from the White House Counsel's Office inviting me to interview for a position on the Fourth Circuit Court of Appeals. That interview took place on January 16, 2024. On April 11, 2024, an attorney from the White House Counsel's Office informed me that they would like me to move forward in the selection process. Since that date, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On June 3, 2024, I was interviewed separately by Senators Thom Tillis and Ted Budd. On July 2, 2024, an attorney from the White House Counsel's Office informed me that the President would announce his intent to nominate me the following day. On July 3, the President announced his intent to nominate me.

59. **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.

60. **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: Yes. In February 2024, I had a brief call with Jake Faleschini and one of his colleagues to discuss the judicial nominating process generally.

61. **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.

62. **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.

63. **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.

64. **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.

65. **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: Yes. During the selection process, I have spoken with attorneys in my professional network who I understand to be associated with the American Constitution Society and the Federalist Society about the judicial nomination process.

66. **Since you were first approached about the possibility of being nominated, did anyone associated with the Biden administration or Senate Democrats give you advice about which cases to list on your committee questionnaire?**
    a. **If yes,**

i. **Who?**
ii. **What advice did they give?**
iii. **Did they suggest that you omit or include any particular case or type of case in your questionnaire?**

Response: Yes. During the selection process, officials with the Office of Legal Policy at the Department of Justice advised that I include cases that were broadly representative of my legal experience, including criminal matters.

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

Response: On January 13, 2024, I was contacted by attorneys from the White House Counsel's Office inviting me to interview for a position on the Fourth Circuit Court of Appeals. That interview took place on January 16, 2024. On April 11, 2024, an attorney from the White House Counsel's Office informed me that they would like me to move forward in the selection process. Since that date, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On June 3, 2024, I was interviewed separately by Senators Thom Tillis and Ted Budd, accompanied by attorneys from the White House Counsel's office. On July 2, 2024, an attorney from the White House Counsel's Office informed me that the President would announce his intent to nominate me the following day. On July 3, the President announced his intent to nominate me.

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

Response: I received these questions from the Office of Legal Policy on August 7 and 8, 2024. I prepared answers after conducting legal research and consulting my records. I finalized my answers after receiving limited feedback from the Office of Legal Policy.

Senate Judiciary Committee
Nominations Hearing
July 31, 2024
Questions for the Record
Senator Amy Klobuchar

For Ryan Park, nominee to be U.S. Circuit Judge for the Fourth Circuit

Since 2017, you have served in the North Carolina Justice Department as Deputy Solicitor General and for the last four years as Solicitor General. In these roles you have represented the State of North Carolina in complex appellate and constitutional issues across a wide variety of subject areas including cases before the U.S. Supreme Court.

- **How have these experiences shaped your career and how will they guide your service as a federal circuit court judge?**

  Response: During my tenure as Solicitor General and Deputy Solicitor General in North Carolina, I have been fortunate to gain extensive experience litigating in the federal and state appellate courts. I have argued over thirty appeals, including nine in the Fourth Circuit and two in the Supreme Court. I have also played a lead role in drafting well over one hundred appellate briefs on a wide range of issues of both civil and criminal law. And I have had supervisory responsibility over all of the State's civil appeals—from pro se habeas cases to complex constitutional disputes. These experiences have provided me broad exposure to, and ready familiarity with, the types of cases and issues that are decided by a Fourth Circuit judge.

  In addition, one thing an effective appellate lawyer learns is how to view the legal issues from the other side's perspective. Doing so allows you to anticipate the other side's arguments and how courts will react to those arguments. I believe that this training will serve me well if I am confirmed, as I transition to the role of a neutral and objective decision maker.

- **Can you describe how you view the role of a judge and how it differs from that of an advocate?**

  Response: I believe that our adversarial system of justice works most effectively when the players in that system unhesitatingly and faithfully play their assigned roles. That is, clients make decisions and establish the parties' ultimate legal positions. Advocates make the best possible arguments for those positions within the bounds of the law. And judges fairly and objectively consider those arguments and make decisions based solely on the law and the record in the case.

  If confirmed, I would bring this commitment to role fidelity in my service as a judge. I would put any personal views I might have aside, and consider the parties' arguments in every case in good faith and with no preconceptions. I would thoroughly review the record, research the law, and apply the law faithfully to the dispute before me. I would

aim to draft clear, accessible judicial opinions that fairly and objectively explain the court's resolution of the case. And in completing all these tasks, I would aim to always treat the parties and their counsel with respect.

Senator Mike Lee
Questions for the Record
Ryan Young Park, Nominee to be United States Circuit Judge for the Fourth Circuit

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

   Response: If confirmed, I would carefully study the record, the parties' submissions, and the applicable legal authorities in every case before me. I would approach these materials with an open mind and resolve cases impartially and fairly, based on the record and binding precedent of the Supreme Court and Fourth Circuit. I would also approach cases with an understanding of the judiciary's limited role in our tripartite system of government to decide concrete cases and controversies.

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

   Response: In interpreting a federal statute, I would first research whether there was Supreme Court or Fourth Circuit precedent that resolved the issue presented in the case. If so, I would faithfully follow that precedent. If precedent did not resolve the issue, I would study the statute's text and apply its plain meaning, "in accord with the ordinary public meaning of its terms at the time of its enactment." *Bostock v. Clayton Cnty.*, 590 U.S. 644, 654 (2020). In conducting this textual analysis, I would consider any applicable canons of construction and other interpretive principles set forth by the Supreme Court and the Fourth Circuit. If this textual analysis did not resolve the case, I would then look to relevant non-binding precedent and appropriate forms of legislative history as authorized by the Supreme Court and Fourth Circuit.

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

   Response: In interpreting a constitutional provision, I would first research whether there was Supreme Court or Fourth Circuit precedent that resolved the issue presented in the case. If so, I would faithfully follow that precedent. If the precedent did not resolve the issue, I would apply the interpretive methodology required by Supreme Court or Fourth Circuit precedent regarding the constitutional provision in question. Where appropriate, this process would include an analysis of the provision's original public meaning.

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

   Response: The Supreme Court has advised that "the public understanding of a legal text in the period after its enactment or ratification . . . is a critical tool of constitutional interpretation." *District of Columbia v. Heller*, 554 U.S. 570, 605 (2008).

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: In cases where precedent does not resolve an issue of statutory interpretation, courts should consider the statute's text and apply its plain meaning. *Bostock v. Clayton Cnty.*, 590 U.S. 644, 654 (2020)

a. 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 Supreme Court has stated that the plain meaning of a legal text should be determined by reference to "its terms at the time of its enactment." *Bostock v. Clayton Cnty.*, 590 U.S. 644, 654 (2020) (statutes); *see New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1, 29 (2022) (constitution).

6. What are the constitutional requirements for standing?

Response: Under Supreme Court precedent, there are three requirements that a plaintiff must satisfy to establish standing. First, "the plaintiff must have suffered an 'injury in fact'—an invasion of a legally protected interest" that is "concrete and particularized" and "actual or imminent." Second, "there must be a causal connection between the injury and the conduct complained of—the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court." Third, "it must be likely as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992).

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

Response: Congress's powers are limited to those enumerated in the Constitution. As the Supreme Court has long recognized, however, among those enumerated powers is the authority to enact laws that are necessary and proper to carrying out Congress's more specifically enumerated powers. *See McCulloch v. Maryland*, 17 U.S. 316 (1819).

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

Response: Under Supreme Court precedent, Congress's authority to act does not "depend on recitals of the power which it undertakes to exercise." *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 570 (2012). If confirmed, I would follow this precedent.

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

Response: The Supreme Court has held that the Constitution protects rights that are not expressly enumerated in the Constitution when they are "deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty." *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997). For example, the Supreme Court has recognized unenumerated rights to interstate travel, *Memorial Hospital v. Maricopa Cnty.*, 415 U.S. 250 (1974); marital privacy, *Griswold v. Connecticut*, 381 U.S. 479 (1965); and 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).

10. What rights are protected under substantive due process?

Response: Please see my response to question 9.

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

Response: The Supreme Court abrogated *Lochner v. New York*, 198 U.S. 45 (1905) in *West Coast Hotel v. Parrish*, 300 U.S. 379, 391 (1937). In *West Coast Hotel*, the Supreme Court held that economic rights are "necessarily subject to the restraints of due process, and regulation which is reasonable in relation to its subject and is adopted in the interests of the community." 300 U.S. at 391. In *Griswold v. Connecticut*, 381 U.S. 479 (1965), the Supreme Court held that the Due Process Clause of the Fourteenth Amendment protects the right to contraceptives. In *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022), however, the Supreme Court held that the Due Process Clause does not protect a right to abortion. If confirmed, I would follow Supreme Court and Fourth Circuit precedent, without regard to any personal views I might have.

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

Response: The Constitution authorizes Congress to enact laws within its enumerated powers. The Supreme Court has held that the Commerce Clause grants Congress the power to regulate "three broad categories of activity": (1) "the use of the channels of interstate commerce," (2) "the instrumentalities of interstate commerce, or persons or things in interstate commerce," and (3) activities that "substantially affect interstate commerce." *United States v. Lopez*, 514 U.S. 549, 558-59 (1995). The Supreme Court has further held that the Commerce Clause does not authorize Congress to "compel[] individuals to *become* active in commerce by purchasing a product." *National Federation of Independent Business v. Sebelius*, 567 U.S. 519, 552 (2012).

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

Response: The Supreme Court has stated that the "traditional indicia of suspectedness" are whether a group is defined by an "immutable characteristic determined solely by the accident of birth," or whether the group is "saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process." *Johnson v. Robison*, 415 U.S. 361, 375 n.14 (1974). Applying this standard, the Supreme Court has determined that race, religion, national origin, and alienage are suspect classes. *See Graham v. Richardson*, 403 U.S. 365, 371-72 (1971).

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

Response: The Supreme Court has explained that "the system of separated powers and checks and balances established in the Constitution was regarded by the Framers as a self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of the other." *Morrison v. Olson*, 487 U.S. 654, 693 (1988).

15. 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 confirmed, I would follow Supreme Court and Fourth Circuit precedent in deciding whether one branch has assumed an authority not granted it by the text of the Constitution. *See, e.g.*, *Zivotofsky ex rel. Zivotofsky v. Kerry*, 576 U.S. 1 (2015); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

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

Response: Judges should apply the law fairly and objectively, without regard to any personal views they might have. Although judges should not allow their personal views to play any role in their decision-making process, they should always treat the parties and their colleagues in a respectful manner.

17. What's worse: Invalidating a law that is, in fact, constitutional, or upholding a law that is, in fact, unconstitutional?

Response: Both outcomes are equally undesirable and judges should work diligently to avoid either outcome.

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

downsides to the aggressive exercise of judicial review? What are the downsides to judicial passivity?

Response: I have not closely studied these historical trends. I do not believe that judges should be aggressive or passive when they review the constitutionality of federal statutes. Judges should fairly and objectively apply the law in an even-handed manner.

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

Response: Judicial review is defined as "a court's review of a lower court's or an administrative body's factual or legal findings." Black's Law Dictionary (11th ed. 2019). Judicial supremacy is defined as "the doctrine that interpretations of the Constitution by the federal judiciary in the exercise of judicial review, esp. U.S. Supreme Court interpretations, are binding on the coordinate branches of the federal government and the states." *Id.*

20. 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 of the Constitution, all federal and state legislative and executive officials are bound by oath to support the Constitution. The concept of judicial supremacy requires such officials to respect the Supreme Court's interpretation of the Constitution. *See, e.g.*, *Cooper v. Aaron*, 358 U.S. 1 (1958). Any question regarding how an elected official should balance any conflict they perceive between these obligations is a policy question that I am precluded from addressing as a judicial nominee.

21. 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: This statement reflects the Founders' understanding that the judiciary would play limited role in our tripartite system of government. Under Article III of the Constitution, judges do not make law, but merely apply the law to decide concrete cases and controversies.

22. As a circuit court judge, you would be bound by Supreme Court precedent. What is the duty of a lower court judge when confronted with a case where the precedent in question does not seem to be rooted in constitutional text, history,

or tradition and also does not appear to speak directly to the issue at hand? In applying a precedent that has questionable constitutional underpinnings, should a lower court judge extend the precedent to cover new cases, or limit its application where appropriate and reasonably possible?

Response: A lower court judge should apply the precedents of the Supreme Court, without regard to any personal views they might have on the correctness of that precedent. As the Supreme Court has held, if "a precedent of [the Supreme Court] has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to [the Supreme Court] the prerogative of overruling its own decisions." *Agostini v. Felton*, 521 U.S. 203, 237 (1997) (internal citation omitted). Whether a precedent controls in a particular case is a context-dependent question that judges should decide fairly and objectively.

23. 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.

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

Response: I am not familiar with that statement or the context in which it was made. Black's Law Dictionary defines "equity" as "fairness; impartiality; evenhanded dealing," or "the body of principles constituting what is fair and right." Black's Law Dictionary (11th ed. 2019).

25. Is there a difference between "equity" and "equality?" If so, what is it?

Response: As noted above, Black's Law Dictionary defines equity as "fairness; impartiality; evenhanded dealing," or "the body of principles constituting what is fair and right." It defines "equality" as "the quality, state, or condition of being equal" or "likeness in power or political status." Black's Law Dictionary (11th ed. 2019). Beyond these definitions, I do not have a view on whether the terms have different meanings.

26. Does the 14th Amendment's equal protection clause guarantee "equity" as defined by the Biden Administration (listed above in question 24)?

Response: The Fourteenth Amendment's Equal Protection Clause provides: "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." I am not aware of any Supreme Court or Fourth Circuit precedent that describes the Equal Protection Clause as guaranteeing "equity" or that uses the definition of "equity" stated above in question 24.

27. How do you define "systemic racism?"

Response: I am not aware of any consensus definition of "systemic racism," nor do I have a personal definition of that term. If confirmed, I would apply the law fairly and objectively, without regard to any personal views I may have on this or any other issue.

28. How do you define "critical race theory?"

Response: Black's Law Dictionary defines "critical race theory" as a "reform movement within the legal profession, particularly within academia, whose adherents believe that the legal system has disempowered racial minorities." *Critical Race Theory*, Black's Law Dictionary (11th ed. 2019). I do not have a personal definition of the term.

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

Response: Please see my responses to questions 27 and 28.

30. Mr. Park, in 2020, you defended North Carolina Governor Cooper's Executive Order which prohibited indoor religious gatherings larger than 10 people unless holding outdoor worship services would be "impossible." It appears that the Governor's order permitted countless *non-religious* gatherings to take place inside—without limiting them to 10 people. Judge Dever, who heard the case, rightly noted, "[t]here is no pandemic exception to the Constitution of the United States or the Free Exercise Clause of the First Amendment." He then went on to highlight a concerning point you made in oral argument. When he asked you who would decide whether it is "impossible" to worship outside, the judge says you "conceded that it *would be a sheriff or other local law enforcement officer* who would decide whether the religious entity or individual was correct in deciding whether it was 'impossible' to worship outside." Did you mean to suggest that law enforcement officers had the power and authority to determine whether someone could exercise his or her First Amendment rights?

Response: Respectfully, at the hearing in this case, I never took the position that a sheriff or law enforcement officer could decide whether a religious entity or

individual was correct in deciding whether it was "impossible" to worship outside under the terms of the Governor's order. Nor did I ever state or suggest that law enforcement officers have the authority to determine whether someone could exercise his or her First Amendment rights.

In May 2020, on the day this case was filed, I was invited to participate in an expedited hearing to be held the next day to defend an executive order issued by the Governor. At that hearing, I repeatedly and emphatically made clear the Governor's position that, under the challenged executive order, religious congregations could convene indoors without limitation "if they believe in good faith that it is not possible" to convene outdoors, including based on practical limitations such as the "weather" or logistical concerns such as "space constraints outdoors." I further made clear that, under the Governor's order, "worship [wa]s an exempted activity from the mass gathering ban" and that all exempted activities—both religious and non-religious—were subject to "the same rules."

The district court was concerned by the fact that, under generally applicable North Carolina law, executive orders may be enforced by local law enforcement. The court therefore posited that any local sheriff could disagree with a religious congregation's judgment that it was not possible to hold religious services outdoors and therefore initiate an enforcement proceeding based on the law enforcement officer's own views.

I made clear that I did not believe this was a correct interpretation of the Governor's order. In response to this concern, I stated: "I would respectfully disagree that that is what this order does. The order says that we trust any organization that is one of the exempted categories to determine [in] good faith whether it is possible to hold your service outdoors." I further stated that "unlike every other case where a challenge like this has arisen, there has never been a citation or any attempted enforcement." I emphasized that "[t]he Governor has categorically not tried to enforce this order in the ways that you describe." I explained that "faith leaders all across the state" had been making declarations that it was not possible for their congregations to gather outdoors and therefore convening indoors, and that "there ha[d] been no enforcement activity" against those religious gatherings anywhere in the State of North Carolina. And I emphasized that, because the Governor did not interpret the order to allow enforcement where a congregation believed in good faith that it was not possible to convene outdoors, any such hypothetical enforcement activity would be outside the bounds of the order.

I also made clear that any attempt to question the sincerity of a congregation's religious beliefs by local law enforcement would be improper and unlawful. In response to the court's concern that the order "would . . . require some deputy sheriff to assess whether the belief of a certain person was sincerely held in saying we need to be inside, more than 10 of us," I responded: "To be absolutely clear, no. Absolutely not." I explained: "Under established precedent, the validity of a sincerely expressed

religious belief is not going to be questioned by a court or by a law enforcement officer."

31. In the same case discussed in Question #30, Judge Dever went on to say of your concession, "That is a remarkable answer in light of the Free Exercise." Can you tell me why the judge would find your answer so problematic?

Response: Please see my response to question 30. I made clear to the district court that law enforcement officers have no authority to question the sincerity of an individual's religious beliefs. As a result, I explained that, under the Governor's order, if a religious congregation or individual "believe[d] in good faith that it is not possible" to convene outdoors, for any reason, then that belief was controlling and the gathering could take place indoors without limitation.

The district court held that the Governor's order was not narrowly tailored and issued a temporary restraining order. In consultation with my office, the Governor chose not to appeal and instead issued a new executive order completely exempting all religious activities from any pandemic-related limitations. This decision was made at a time, early in the pandemic, when the majority of states—led by members of both major political parties—imposed restrictions on mass gatherings of all kinds, and when many appellate courts, including the Supreme Court, had declined to enjoin similar or more-restrictive executive orders.

32. In 2019, you participated in the American Constitution Society's "Progressive Federalism Panel." In it you suggested that some forms of federalism are not "legitimate." From your comments, it appears you were saying that when federalism arguments advance a progressive agenda, then federalism is a good thing, but when a more conservative state uses federalism arguments to thwart progressive ideas, that is a bad thing. Is this a correct interpretation of your argument? If no, why?

Response: Respectfully, no, that is not a correct interpretation of my comment. In the context of that panel, I defined "progressive federalism" to mean when "Attorneys General come together to protect people" and preserve their rights. I offered two examples that meet this definition: the 50-state effort to combat the opioid crisis by holding the manufacturers and distributors of opioids accountable for their roles in fueling the crisis, and the multistate effort among the States on the Atlantic Coast to prevent offshore drilling off our coast. Both of those efforts were bipartisan.

In this panel, I was therefore describing a form of litigation by state attorneys general, not federalism more generally. Federalism is a bedrock structural feature of our constitutional system. As an advocate representing state-government clients, I have frequently made federalism-based arguments, including in a case where I prevailed in asserting the defense of state sovereign immunity in the Supreme Court.

See Allen v. Cooper, 589 U.S. 248 (2020). If confirmed, I would faithfully follow all Supreme Court and Fourth Circuit precedents, including those relating to federalism.

33. How does *progressive federalism* differ from the *constitutional* form of federalism espoused by the founding fathers?

Response: Please see my response to question 32.

34. Mr. Park, in 2016, Justice Ruth Bader Ginsburg for whom you clerked made some comments about then-candidate Donald Trump which, she admitted were "ill-advised" and she correctly stated that "judges should avoid commenting on a candidate for public office." Yet, you and a fellow Ginsburg clerk, while referencing her own regret over her comments, doubled-down and defended her justification in criticizing Trump by saying her comments were "not necessarily improper." Should judges or justices be exempt from abiding by the Code of Conduct for United States Judges or the judicial canons if an issue or a candidate is egregiously offensive to them?

Response: No, I believe that judges and justices should at all times scrupulously adhere to all applicable ethical rules, including those found in the Code of Conduct for United States Judges. I co-authored this article in an ill-advised attempt to defend the Supreme Court Justice for whom I clerked from public criticism. The decision to co-write the article was a mistake, as were the words and arguments used in the article. I regret the decision to co-author the article and do not stand by it today. If confirmed, I will always endeavor to fully comply with all obligations under the Code of Conduct for United States Judges.

35. In your 2016 piece defending Justice Ginsburg, you seem to suggest that if a candidate is offensive enough, Justices have a duty to speak out against them. You wrote, "Ginsburg has served on the court during five previous presidential election cycles without, to our knowledge, making similar public comments. But Trump is not just any presidential candidate. Trump's disdain for the rule of law and our constitutional system is a central tenet of his political philosophy. . ." You went on to write "A major political party will soon choose a presidential nominee whose election—If he governs as he campaigns—could feasibly precipitate a constitutional crisis of a magnitude the 83-year-old justice has not witnessed in her lifetime. We agree that justices should rarely voice their political opinions on a particular candidate or election. But when a justice does decide to speak, we should listen." Do you stand by these statements? Do you believe this applies to all federal judges?

Response: No, I do not. I co-authored this article in an ill-advised attempt to defend the Supreme Court Justice for whom I clerked from public criticism. The decision to co-write the article was a mistake, as were the words and arguments used in the article. I regret the decision to co-author the article and do not stand by it today. As a judicial nominee, I am now bound by the Code of Conduct for United States Judges, which bars me from

engaging in political activity, including making public comments on political candidates. I believe this rule is valuable and appropriate. If confirmed, I will scrupulously adhere to this and all other ethical rules in the Code of Conduct.

36. This week President Biden called for 18-year term limits for Justices. You wrote an article in 2016 for *The Atlantic* entitled "The Supremely Old, Supremely Sharp, Supreme Court." Considering our jurisprudence is uniquely improved with more thought and deliberation and steeping in the law, how do you suspect our Supreme Court jurisprudence would be impacted by 18-year term limits?

Response: I served as a law clerk when several Justices were past their 18th year of service on the Court, including Justices Ginsburg and Scalia. As I recounted in that article, "[t]he sharpness of [Justice Scalia's] mind and the rigor of his jurisprudence were regularly on display up until his passing," and "up until his last breath, there was no indication that he had dulled in his ability to navigate the incredible intellectual challenges that were his job description." Through this personal experience, I observed that Supreme Court Justices can serve with distinction beyond their 18th year of service. Beyond that, however, I do not have a view on how Supreme Court jurisprudence would be affected by term limits. This question implicates both policy questions and potential constitutional issues that federal courts may be called upon to decide. As a judicial nominee, I am therefore precluded by the Code of Conduct for United States Judges from commenting on the substance of the proposal.

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

Questions for the Record for Ryan Young Park nominated to serve as U.S. Circuit Judge for the Fourth Circuit

1. 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.

Questions

1. **Is racial discrimination wrong?**

   Response: Yes.

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 Supreme Court's test for identifying an unenumerated fundamental right under the due process clauses of the Fifth and Fourteenth Amendments is whether the right is "deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty." *Washington v. Glucksburg*, 521 U.S. 702, 721 (1997) (citations and internal quotation marks omitted). Under this historical test, rights have been identified by the Supreme Court only rarely. If confirmed, I would apply Supreme Court precedent to evaluate claims seeking recognition of as-yet-unidentified unenumerated rights.

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: If confirmed, I would carefully study the record, the parties' submissions, and the applicable legal authorities in every case before me. I would approach these materials with an open mind and resolve cases impartially and fairly, based on the record in the case and binding precedent of the Supreme Court and Fourth Circuit. I would also approach cases with an understanding of the judiciary's limited role in our tripartite system of government to decide concrete cases and controversies. I believe many Justices share this approach to deciding cases.

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

   Response: Broadly speaking, originalism is the view that the Constitution should be interpreted in the way the relevant text was understood at the time of its adoption. I do not personally subscribe to any labels in terms of how I approach constitutional interpretation. However, I believe that originalism can be a helpful tool for illuminating the Constitution's meaning. The Supreme Court has in many areas used originalist methodology to interpret constitutional text. *See District of Columbia v. Heller*, 554 U.S. 570 (2008) (Second Amendment); *Crawford v. Washington*, 514 U.S. 36 (2006) (Confrontation Clause). If confirmed, I would follow these precedents.

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

Response: My understanding is that living constitutionalism is the view 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 do not personally subscribe to any labels in terms of how I approach constitutional interpretation. I am not aware of any Supreme Court decision adopting a living constitutionalist methodology. If confirmed, I would follow Supreme Court precedent on the proper interpretive method to use with respect to a particular constitutional provision.

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 confronted with a true issue of constitutional first impression, I would follow the precedents of the Supreme Court in interpreting the constitutional provision in question. In many instances, doing so would entail identifying and then applying the original public meaning of that provision.

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

Response: If confirmed, I would follow Supreme Court and Fourth Circuit precedent on the meaning of a constitutional or statutory provision. In most situations, the public's current understanding is not relevant to interpreting a constitutional provision. However, there are cases where, for example, the Supreme Court has held it is permissible for courts to evaluate "contemporary community standards" to resolve constitutional cases. *See Ashcroft v. American Civil Liberties Union*, 535 U.S. 564, 574-75 (2002) (describing the obscenity test under the First Amendment). For statutory cases, the Supreme Court has held that a statute should "normally" be interpreted "in accord with the ordinary public meaning of its terms at the time of its enactment." *Bostock v. Clayton Cnty.*, 590 U.S. 644, 654 (2020).

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

Response: No. As the Supreme Court has held, "although [the Constitution's] 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." *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. 1, 28 (2022).

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

Response: *Dobbs v. Jackson Women's Health Organization* is binding precedent from

the Supreme Court, which lower courts must follow.

a. Was it correctly decided?

Response: As a judicial nominee, the Code of Conduct for United States Judges generally precludes me from commenting on whether the Supreme Court correctly decided a case. If confirmed, I would faithfully follow Supreme Court and Fourth Circuit precedent, including *Dobbs*.

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

Response: *Cooper v. Aaron* is binding precedent from the Supreme Court, which lower courts must follow.

a. Was it correctly decided?

Response: As a judicial nominee, the Code of Conduct for United States Judges generally precludes me from commenting on whether the Supreme Court correctly decided a case. If confirmed, I would faithfully follow Supreme Court and Fourth Circuit precedent, including *Cooper v. Aaron*.

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

Response: *New York Rifle & Pistol Association v. Bruen* is binding precedent from the Supreme Court, which lower courts must follow.

a. Was it correctly decided?

Response: As a judicial nominee, the Code of Conduct for United States Judges generally precludes me from commenting on whether the Supreme Court correctly decided a case. If confirmed, I would faithfully follow Supreme Court and Fourth Circuit precedent, including *Bruen*.

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

Response: *Brown v. Board of Education* is binding precedent from the Supreme Court, which lower courts must follow.

a. Was it correctly decided?

Response: As a judicial nominee, the Code of Conduct for United States Judges generally precludes me from commenting on whether the Supreme Court correctly decided a case. However, the constitutionality of racial segregation of schools is not likely to come before the courts again, so consistent with the practice of past nominees, I may state my opinion that *Brown* was correctly decided. If confirmed, I would

faithfully follow Supreme Court and Fourth Circuit precedent, including *Brown*.

13. **Is the Supreme Court's ruling in *Students for Fair Admissions v. University of North Carolina* settled law?**

Response: *Students for Fair Admissions v. University of North Carolina* is binding precedent from the Supreme Court, which lower courts must follow.

a. Was it correctly decided?

Response: As a judicial nominee, the Code of Conduct for United States Judges generally precludes me from commenting on whether the Supreme Court correctly decided a case. If confirmed, I would faithfully follow Supreme Court and Fourth Circuit precedent, including *Students for Fair Admissions*.

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

Response: *Gibbons v. Ogden* is binding precedent from the Supreme Court, which lower courts must follow.

a. Was it correctly decided?

Response: As a judicial nominee, the Code of Conduct for United States Judges generally precludes me from commenting on whether the Supreme Court correctly decided a case. If confirmed, I would faithfully follow Supreme Court and Fourth Circuit precedent, including *Gibbons v. Ogden*.

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

Response: The offenses that trigger a presumption of pretrial detention are set forth in 18 U.S.C. § 3142(e). These offenses include certain violent crimes, certain crimes involving minor victims, and controlled-substance offenses for which the maximum term of imprisonment is ten years or more.

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

Response: I am not aware of any policy rationales listed in the relevant statute or discussed in precedents of the Supreme Court or Fourth Circuit. If confirmed, I would apply the statute as written.

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. The Supreme Court has addressed the limits on the government's

authority to regulate private institutions, including religious organizations and small businesses operated by observant owners. For example, the Supreme Court has held that the Religious Freedom Restoration Act of 1993 (RFRA) covers both religious organizations and small businesses operated by observant owners. *See Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania*, 591 U.S. 657 (2020); *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014). If confirmed, I would faithfully follow Supreme Court and Fourth Circuit precedent on this and any other topic.

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

Response: The Supreme Court has made clear that the government "cannot impose regulations that are hostile to the religious beliefs of affected citizens and cannot act in a manner that passes judgment upon or presupposes the illegitimacy of religious beliefs and practices." *Masterpiece Cakeshop, Ltd. v. Colorado C.R. Comm'n* 584 U.S. 617, 638 (2018). Laws that discriminate against religion are subject to strict scrutiny. *Tandon v. Newsom*, 593 U.S. 61 (2021).

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: In *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14 (2020), the Supreme Court held that the plaintiff religious organizations were entitled to a preliminary injunction to bar enforcement of an executive order. The Court held that plaintiffs were likely to prevail on the merits of their First Amendment claims because they had made a strong showing that the challenged regulations were not neutral toward religion and were not narrowly tailored to further a compelling interest. The Court further held that the plaintiffs faced irreparable harm, and that a preliminary injunction would not harm the public interest.

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

Response: In *Tandon v. Newsom*, 593 U.S. 61 (2021), the Supreme Court held that plaintiffs challenging California's restrictions on private gatherings during the COVID-19 pandemic were entitled to injunctive relief pending appeal. The Court held that "government regulations are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat any comparable secular activity more favorably than religious exercise." *Id.* at 1296. The Court determined that plaintiffs were likely to succeed on their claims because the California

restrictions treated "some comparable secular activities more favorably than at-home religious exercise" and were not narrowly tailored to advance a compelling interest. *Id.* at 1297. The Court further held that plaintiffs faced irreparable harm, and that a preliminary injunction would not harm the public interest.

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

Response: Yes.

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

Response: *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 584 U.S. 617 (2018), involved a baker who refused to create a custom cake for a same-sex couple's wedding based on his religious beliefs. The Colorado Civil Rights Commission concluded that the baker's refusal violated the state's anti-discrimination law. The Supreme Court held that the Commission violated the baker's rights under the Free Exercise Clause. The Court explained that this clause bars "even subtle departures from neutrality" concerning religion. *Id.* at 638. The Court held that the Commission did not exhibit neutrality in that case because it had shown "clear and impermissible hostility" to the baker's sincerely held religious beliefs. *Id.* at 634.

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: Yes. The Supreme Court has held that sincerely held religious beliefs are protected regardless of whether they are consistent with a particular faith tradition. *See Frazee v. Illinois Department of Employment Security*, 489 U.S. 829, 834 (1989).

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

Response: The Supreme Court has held that courts may not examine whether religious beliefs are "correct." All religious beliefs are protected by the Free Exercise Clause if they are sincerely held. *See Frazee v. Illinois Department of Employment Security*, 489 U.S. 829, 833 (1989).

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

Response: The Supreme Court has held that religious beliefs are protected by the Free Exercise Clause if they are sincerely held. *See Frazee v. Illinois Department of Employment Security*, 489 U.S. 829, 833 (1989).

c. Is it the official position of the Catholic Church that abortion is acceptable

and morally righteous?

Response: As a judicial nominee, I am not in a position to comment on the official position of a religion.

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 School v. Morrissey-Berru*, the Supreme Court addressed the scope of the "ministerial exception," which prohibits courts from intervening in employment disputes between religious institutions and certain employees. 591 U.S. 732 (2020). The Court held that the ministerial exception applies not only to ministers, but also to lay teachers "who were entrusted most directly with the responsibility of educating their students in the faith." *Id.* at 757.

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: In *Fulton v. City of Philadelphia*, 593 U.S. 522 (2021), Philadelphia applied its anti-discrimination policy to bar a Catholic organization from its foster care program because the organization refused to work with same-sex couples as potential foster parents. The Supreme Court held that Philadelphia's policy was not generally applicable, and was thus subject to strict scrutiny, because it allowed for discretionary exemptions on a case-by-case basis. The Court further held that the policy failed strict scrutiny and therefore violated the Free Exercise Clause.

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: In *Carson v. Makin*, 596 U.S. 767 (2022), a Maine program barred religious schools from a tuition subsidy program for private schools. The Supreme Court held that this policy violated the Free Exercise Clause, which bars a state from excluding "religious observers from otherwise available public benefits." *Id.* at 778.

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

Response: In *Kennedy v. Bremerton School District*, 597 U.S. 507 (2022), a high school

football coach was fired for engaging in private prayer after games. The Supreme Court held that the school district's actions violated the Free Exercise and Free Speech Clauses of the First Amendment. On the free exercise claim, the Court held that the district's actions were not neutral because they were motivated in part by the "religious character" of the prayer, and that the district did not satisfy any form of heightened scrutiny. *Id.* at 526-27. On the speech claim, the Court held that the coach's speech was not government speech because, on the facts of the case, his prayers were not within the scope of his official duties.

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: In *Mast v. Fillmore County*, 141 S. Ct. 2430 (2021), an ordinance required the installation of modern septic systems, including by members of an Amish community. The Supreme Court vacated a state court decision upholding the ordinance's application, in light of *Fulton County v. City of Philadelphia*, 593 U.S. 522 (2021). In his concurrence, Justice Gorsuch stated that the state court had misapplied the strict scrutiny standard required under the Religious Land Use and Institutionalized Persons Act. *Mast*, 141 S. Ct. at 2432. Justice Gorsuch stated that the "courts below erred in treating the County's *general* interest in sanitation regulations as 'compelling' without reference to the *specific* application of those rules to *this* community." *Id.* He also stated that the courts must give "due weight to exemptions other groups enjoy" but that had been denied to the religious group in question.

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: I am not aware of any Supreme Court or Fourth Circuit precedent specifically addressing whether the First Amendment restricts application of 18 U.S.C. § 1507 as applied to protests in front of the homes of Supreme Court Justices. If confirmed, I would faithfully follow binding precedent on the interpretation and application of the First Amendment to this issue, should it arise 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: As a judicial nominee, the Code of Conduct for United States Judges generally precludes me from commenting on political issues or issues that could come before me as a judge if I am confirmed. If confirmed, I would faithfully follow binding precedent on this or any other issue.

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

Response: The Supreme Court has held that a racially disparate outcome may constitute evidence of illegal discrimination in certain contexts, but that disparate impact alone is insufficient to establish a violation of the Equal Protection Clause. *See, e.g., Ricci v. DeStefano*, 557 U.S. 557, 577-78 (2009); *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977). If confirmed, I will faithfully follow binding precedent on this or any other issue.

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

Response: As a judicial nominee, it would not be appropriate for me to comment on whether the number of Justices should be increased or decreased. This is a policy

question for the political branches to consider, as the Constitution does not establish a fixed number of Supreme Court Justices.

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

Response: No.

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 protects an individual right to keep and bear arms for self-defense. *District of Columbia v. Heller*, 554 U.S. 570 (2008). This right applies both inside and outside the home. *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. 1 (2022).

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: Building off its previous decisions in *Heller* and *McDonald*, the Supreme Court set forth a test for analyzing regulations on firearms in *New York Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022). Under that test, "when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, . . . the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation." *Id.* at 17. The Supreme Court clarified in *United States v. Rahimi*, that "the Second Amendment permits more than just those regulations identical to ones that could be found in 1791." 144 S. Ct. 1889, 1897-98 (2024). Instead, "the appropriate analysis involves considering whether the challenged regulation is consistent with the principles that underpin our regulatory tradition." *Id.* at 1898.

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

Response: Yes. The Supreme Court has held that the Second Amendment protects an individual's right to keep and bear arms. *See District of Columbia v. Heller*, 554 U.S. 570 (2008).

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 made clear that the Second Amendment right to keep and bear arms is not a "second-class right." *McDonald v. City of Chicago*, 561 U.S. 742, 780 (2010).

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

the Constitution?

Response: No.

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

Response: The President has a constitutional duty to "take care that the laws be faithfully executed." U.S. Const. art. II, § 3. The Supreme Court has also held that the executive has broad, but not unlimited, discretion to determine whether to initiate civil or criminal enforcement proceedings. *See Heckler v. Chaney*, 470 U.S. 821, 831 (1985); *Wayte v. United States*, 470 U.S. 598, 608 (1985). If confirmed, I would faithfully follow binding precedent on this or any other issue.

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

Response: Generally speaking, prosecutorial discretion refers to an individual decision by an executive official on whether to initiate a criminal or civil enforcement matter. A substantive administrative rule is an "officially promulgated agency regulation that has the force of law." Black's Law Dictionary (11th ed. 2019).

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

Response: No.

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

Response: In *Alabama Association of Realtors v. HHS*, 594 U.S. 758 (2021), the Supreme Court held that the Centers for Disease Control likely exceeded its statutory authority when it issued a nationwide moratorium on evictions during the COVID-19 pandemic.

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: No.

46. **You represented the University of North Carolina at Chapel Hill in the Supreme Court case *Students for Fair Admissions, Inc. v. University of North Carolina*. You stated it was a "great honor" to defend UNC's admissions policy, which prioritizes diversity including race. Why was this case a particularly "great honor" for you to defend?**

Response: As Solicitor General for the State of North Carolina, I consider it a great honor to represent all the state's agencies and officials when their policies are challenged in court. That includes the dozens of cases where I have defended the constitutionality of statutes passed by the Republican-controlled North Carolina General Assembly or represented elected officials of both major political parties to defend their policies and legal positions. I take pride in representing my state clients without regard to any personal views I might have on a particular policy or law that I am asked to defend. As an appellate lawyer, it is a particular honor to represent a client in the Supreme Court. I have similarly described my experience in another case I argued in that court, *Allen v. Cooper*, as a "profound honor." Interview by Jessica Junqueira with Ryan Park, N.C. Lawyer Magazine, Feb. 15 2021. As in all cases that I have handled as an advocate, in representing the University of North Carolina in *Students for Fair Admissions*, I never let any personal views I might have affect the nature of my representation. It was also an honor to work with the University after the Supreme Court's decision, to ensure that the University fully complied with that decision.

47. **Does the 14th Amendment's prohibition on governments from "deny[ing] to any person within its jurisdiction the equal protection of laws" permit a law that treats a person better based solely on their skin color?**

Response: Generally speaking, any law that makes race-based classifications is subject to strict scrutiny under the Supreme Court's precedents interpreting the Equal Protection Clause of the Fourteenth Amendment. *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 227 (1995). Only rarely has the Supreme Court held that government consideration of race survives strict scrutiny. *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181, 208 (2023) (noting that "acceptance of race-based state action has been rare," such as to "remediat[e] specific, identified instances of past discrimination that violated the Constitution or a statute"). If confirmed, I will faithfully follow all Supreme Court precedent on this or any other area of law.

48. **You confirmed during oral arguments that race-based admissions might still be necessary beyond the 25-year period established in *Grutter v. Bollinger*. How do you justify the continued use of race-based criteria in admissions policies? Specifically, how much additional time would be required for such policies? Please provide a detailed rationale for the length of time you believe is necessary.**

Response: As in all the cases that I have handled as an advocate, I represented my client's position to the best of my ability, consistent with applicable law, regardless of any personal views I might have. In *Students for Fair Admissions*, the Supreme Court stated that the "25-year mark articulated in *Grutter* . . . reflected only that Court's view that race-based preferences would, by 2028, be unnecessary to ensure a requisite level of racial diversity on college campuses." 600 U.S. at 224. At oral argument, I conveyed my client's position that it "enthusiastically embrace[d] the durational requirement" from *Grutter* and that it understood that "these programs can and do end." Tr., No. 21-707 (S. Ct.) at 81, 83. However, as the Supreme Court noted in ruling against my client,

the University had not specifically "set forth a proposed time period" for ending race-conscious admissions practices. 600 U.S. at 225 (quoting 567 F. Supp. 3d at 612). Following the Supreme Court decision, I worked with the University to ensure full compliance with the decision. If confirmed, I would likewise faithfully follow the Supreme Court's precedent in this and any other case.

49. **In your response brief, you indicated that race rarely influenced admissions decisions at UNC, citing that only 1.2% of admissions decisions were based on race. Do you contend that the Equal Protection Clause of the Constitution permits a court to allow a violation of equal protection, provided that such a violation occurs in only a small fraction of cases, such as 1 out of every 100?**

Response: As in all the cases that I have handled as an advocate, I represented my client's position to the best of my ability, consistent with applicable law, regardless of any personal views I might hold. In this case, the district court's factual finding that race explained 1.2% of admissions decisions was relevant because, under then-applicable precedent, the Supreme Court had held that the modest consideration of race in this context is a "hallmark of narrow tailoring." *Fisher v. Univ. of Tex. at Austin*, 579 U.S. 365, 385 (2016). In *Students for Fair Admissions*, the Supreme Court overruled *Fisher* and held that race-conscious admissions systems like the one used by the University of North Carolina do not satisfy strict scrutiny. Any violation of the Equal Protection Clause is improper and unconstitutional. If confirmed, I would faithfully follow the Supreme Court's precedents on equal protection.

a. If so, where in the text of the Equal Protection Clause is such a justification supported? If not, how do you reconcile the Equal Protection Clause's guarantee of equal protection to "any person within its jurisdiction" with your position in *Students for Fair Admissions*, where you argued that these protections did not extend to students who were denied admission to UNC due to racial considerations?

Response: Please see my response to question 49. In addition, the Supreme Court has held that all persons, of any racial background, are entitled to protection under the Equal Protection Clause. *See, e.g.*, *Reynolds v. Sims*, 377 U.S. 533, 568 (1964). If confirmed, I would faithfully follow Supreme Court and Fourth Circuit precedents on equal protection.

50. **If a federal program discriminated based on race by 1.2%, would that be acceptable under constitutional principles?**

Response: The Supreme Court has held that the government may consider race only rarely, and only if the government's action complies with strict scrutiny. As a judicial nominee, it would not be appropriate to comment further on hypothetical cases. If confirmed, I will faithfully follow Supreme Court precedent on this or any other issue.

51. **Was it inappropriate in any way for a state university like UNC to consider race at**

all in its admissions process?

Response: As in all the cases that I have handled as an advocate, I represented my client's position to the best of my ability, consistent with applicable law, regardless of any personal views I might hold. The Supreme Court held in 2003 that "student body diversity is a compelling state interest that can justify the use of race in university admissions." *Grutter v. Bollinger*, 539 U.S., 326, 325 (2003). In *Students for Fair Admissions*, the Supreme Court held that student body diversity no longer qualified as a compelling interest justifying race-conscious admissions programs. If confirmed, I would faithfully follow Supreme Court precedent in this or any other area of law.

52. **After the decision, did the demographics of UNC's incoming class change significantly compared to previous years, and if so, how?**

Response: Following the Supreme Court's decision in *Students for Fair Admissions*, I worked with the University of North Carolina to ensure full compliance with the Court's decision. As the University's chancellor noted after the Board of Trustees voted to bar the institution from considering race in admissions decisions: "Race will not be a factor in admissions decisions at the university" moving forward.

The University recently released data on the demographics of this year's incoming class. The data showed a modest but meaningful decrease in enrollment of Black students (from 10.5% of the class to 7.8% of the class). There were smaller changes of 1% or less for all other demographic groups, with Hispanic enrollment falling by 0.7%, American Indian enrollment falling by 0.5%, Asian-American enrollment rising by 1%, Pacific Islander enrollment rising by 0.1%, and White enrollment rising by 0.1%.

53. **In the case, you argued that expert testimony showed that "no workable race-neutral alternatives currently exist" based on "more than 100 simulations of various alternatives" with "generous assumptions to maximize the chance than an alternative would prove workable." You told the Court that "[d]espite these efforts, not a single simulation achieved a racially diverse, academically qualified class about as well as UNC's current holistic admissions process." If that is true, how was UNC able to get similar racial diversity since departing from the model?**

Response: As in all the cases that I have handled as an advocate, I represented my client's position to the best of my ability, consistent with applicable law, regardless of any personal views I might have. My understanding is that the changes in the demographics of the University of North Carolina's incoming class generally aligns with the district court's factual finding that, during the years in question, race played a role in a small, but meaningful, percentage of the University's admissions decisions.

54. **Chief Justice Roberts criticized the practice of treating students based on race rather than individual experiences. Do you believe the constitutional history supports the use of race as a significant factor in admissions?**

Response: As in all the cases that I have handled as an advocate, I represented my client's position to the best of my ability, consistent with applicable law, regardless of any personal views I might hold. The Supreme Court in *Students for Fair Admissions* held that student body diversity does not justify a race-conscious university admissions policy. It therefore rejected any suggestion that constitutional history supports the use of race as a significant factor in university admissions. If confirmed, I would faithfully follow this and all precedents of the Supreme Court.

55. **In a February 9, 2024 speech, you described yourself as the "tip of the spear" for Attorney General Josh Stein's agenda.**

Response: Respectfully, that remark in context makes clear that I was explaining that my role is to advocate for the decisions and policies of both the Attorney General *and* my other clients, many of whom are elected Republican state officials. In dozens of cases, I have defended the constitutionality of statutes enacted by the Republican-controlled North Carolina General Assembly or represented elected Republican state officials in defense of their policies and positions. In several of these cases, I zealously defended laws or positions that Attorney General Stein had vocally opposed in his previous role as a state senator.

This is the full context of that comment: "[I]n my office, as in most offices across the country and in the federal government, the solicitor general is not the chief policymaking officer. There's actually several people above me in the org chart that can dictate the positions I take. But I'm the senior attorney in the office whose job it is to be a practicing attorney. So I'm really more of the tip of the spear to try to effectuate the policy judgments and the positions that my boss, the attorney general of North Carolina, Josh Stein, has articulated — articulates and advances — *and the positions that my clients take*. So that is my role as kind of the senior practicing litigator for North Carolina." I go on to say: "Like most states, in our state, the attorney general is an independently elected executive officer. So he's elected by the people, and he has appointed me in my position. And it creates an interesting situation in a state like North Carolina, where I represent a whole host of officials and agencies. Sometimes they are in opposition to one another, honestly. And so *I am often representing people of the opposite political party as my boss*."

Thus, in context, it is clear that I made this comment to explain that, as North Carolina's Solicitor General, I am not a policymaker and therefore do not decide the policies that I am asked to defend in court. Instead, my role is to be an advocate and make the best available arguments to support the positions and policies decided by others, without regard to any personal views I might hold.

a. What does that mean? What is Josh Stein's agenda, and what is your role in being the "tip of the spear" for carrying it out?

Response: Please see my response to question 55. As I explained in the remarks quoted above, my role as Solicitor General is to make the best possible arguments to defend the

policy positions taken by others, including Attorney General Stein and my other clients, many of whom are elected Republican state officials.

b. Do you serve the agenda of Josh Stein or the broader interests of the people of North Carolina?

Response: Please see my response to question 55. My role as Solicitor General is to represent the interests of the State of North Carolina as a whole. As I explained in my remarks, I am not a policymaking official and therefore do not decide the policies that I am asked to defend. Instead, my role is to make the best possible arguments to defend the policy positions taken by others, including Attorney General Stein and my other clients, many of whom are elected Republican state officials.

56. **You stated to a panel on a video played before the Senate Judiciary Committee that you are a "progressive lawyer who wanted to make a difference." Why did you choose to appear in that video?**

Response: I have attended and participated in a wide variety of legal conferences and events, including numerous panels hosted by both the American Constitution Society and the Federalist Society. The panel in question was a student-focused event hosted by the American Constitution Society. It offered an opportunity to discuss my work and career with the next generation of lawyers.

Another set of remarks featured in that video was from a panel event hosted by the Federalist Society, where I appeared with several current and former state Solicitors General who were appointed by Republican Attorneys General. In that panel, I made clear that I am not a policymaking official, and that therefore determining the policy positions that I am asked to defend "really is above my pay grade." I further explained that "I have personally defended way more statutes that [Attorney General Stein] voted against when he was a state senator than those that he voted for." I later explained that in North Carolina "many executive officials are members of the opposing political party" to Attorney General Stein, and that when I represent those officials, "I'm trying to win the case, and nothing else."

a. What does being a "progressive lawyer" mean as distinguished from any lawyer who wants to make a difference?

Response: In the context of that panel, I defined a "progressive" state government lawyer to mean when "Attorneys General come together to protect people" and preserve their rights.

b. You called Josh Stein a "new progressive." How do he and other progressives align with your unique perspective as a "progressive" lawyer?

Response: I referred to him as a "new progressive Attorney General," and thus used the word progressive as an adjective, not a noun. In the context of that panel, I meant that

Attorney General Stein has worked with other Attorneys General to protect people's rights. I offered two examples of his work that met this definition: the 50-state effort to combat the opioid crisis by holding the manufacturers and distributors of opioids accountable for their roles in fueling the crisis, and the multistate effort among the States on the Atlantic Coast to prevent offshore drilling off our coast. Both of those efforts were bipartisan.

57. **You were counsel of record in multiple cases where you did not defend North Carolina laws. Can you explain why you chose not to defend these laws?**

Response: Any decision on whether to defend a law is made by an elected policymaking official like the Attorney General. As I am not a policymaking official, I have never chosen not to defend a law. Instead, as in all cases where I have served as an advocate, I have made the best possible arguments for my client's position, without regard to any personal views I might hold.

58. **The Supreme Court ruled in *Berger et al. v. North Carolina State Conference of the NAACP* that the North Carolina state legislature had the right to intervene because you did not adequately defend their interests. Why did you not adequately defend North Carolina law in this case?**

Response: I had no role in this case prior to the appeal. At the trial level, the legislative leaders sought to intervene, arguing that the Attorney General was not adequately defending the law because the career North Carolina Department of Justice lawyers defending the lawsuit did not develop the record in certain ways at the preliminary injunction stage. Again, I had no involvement in this case during that time, and thus had no contemporaneous knowledge of how the trial record was being developed.

In my first interaction with this case, I assisted on the Attorney General's appeal of the district court's order entering a preliminary injunction against the law. That appeal was successful, and the Fourth Circuit vacated the injunction. *N.C. State Conf. of the NAACP v. Raymond*, 981 F.3d 295, 311 (4th Cir. 2020). The appeal was decided based on the record developed by career Department of Justice lawyers in the trial court, thus negating the legislative leaders' concern that those lawyers had not adequately developed the record below.

a. As Solicitor General, what criteria or protocol did you use to determine whether you defend a duly enacted law that is being challenged?

Response: As Solicitor General, I am not a policymaking official and therefore have never decided whether to defend a law. Any decision not to defend a duly enacted law is made by an elected policymaking official like the Attorney General. In all cases where I have served as an advocate, I have made the best possible arguments for my client's position, without regard to any personal views I might hold.

59. **Will you refuse to apply Supreme Court precedents that you personally disagree**

with if confirmed as a judge?

Response: No. If confirmed, I will faithfully apply all Supreme Court precedents in any case before me, without regard to any personal views I might hold.

60. **Given your history of not defending North Carolina laws, how can the Judiciary Committee trust your commitment to upholding all legal precedents?**

Response: As Solicitor General, I am not a policymaking official and therefore have never decided whether to defend a law. Any decision not to defend a duly enacted law is made by an elected policymaking official like the Attorney General. If confirmed, I will faithfully apply all precedents of the Supreme Court and Fourth Circuit.

61. **You have expressed progressive views and discussed "progressive federalism" at an American Constitution Society panel. What do you mean by "progressive federalism"?**

Response: In the context of that panel, I defined "progressive federalism" to mean when "Attorneys General come together to protect people" and preserve their rights.

62. **You mentioned that progressive federalism is acceptable when it is "rights enhancing" but questioned its legitimacy when used to harm disadvantaged groups. Do you believe federalism is only valid if it enhances rights?**

Response: No. Federalism is a bedrock structural feature of our constitutional system. In the context of that panel, I defined "progressive federalism" to mean when "Attorneys General come together to protect people" and preserve their rights. I was therefore describing a form of litigation by state Attorneys General, not federalism more generally. As an advocate representing state-government clients, I have frequently made federalism-based arguments, including in a case where I prevailed in asserting the defense of state sovereign immunity in the Supreme Court. *See Allen v. Cooper*, 589 U.S. 248 (2020). If confirmed, I will faithfully follow all Supreme Court and Fourth Circuit precedents, including those relating to federalism.

63. **Are courts the primary bodies responsible for enhancing rights under the Constitution?**

Response: No. In our constitutional system, the primary policymaking organs of government are state legislatures and Congress. Courts have a limited role to decide concrete cases and controversies by faithfully applying the laws enacted by others.

64. **How do you view the legitimacy of the Affordable Care Act lawsuit led by Texas? Does it align with your definition of progressive federalism?**

Response: The Attorney General of Texas has stated that he initiated the lawsuit in question based on his view that it was unlawful for the federal government to order

private citizens to purchase health insurance. In that respect, the lawsuit was designed to protect his citizens' rights and therefore aligns with how I defined progressive federalism in the context of that panel. If confirmed, I would faithfully apply binding precedent of the Supreme Court and Fourth Circuit, without regard to any personal views I might hold.

65. **Do you consider lawsuits by states that seek to challenge or overturn established rights as efforts to "take away rights and harm disadvantaged groups"?**

Response: In the abstract, I do not have a view on whether any hypothetical lawsuit fits within this category. If confirmed, I would faithfully apply binding precedent of the Supreme Court and Fourth Circuit, without regard to any personal views I might hold.

66. **You defended North Carolina's prohibition on indoor religious gatherings larger than ten people in *Berean Baptist Church v. Cooper*. Did Governor Cooper's Executive Order allow non-religious gatherings to occur indoors without similar restrictions?**

Response: No. In May 2020, on the day this case was filed, I was invited to participate in an expedited hearing to be held the next day to defend an executive order issued by the Governor. At that hearing, I repeatedly and emphatically made clear the Governor's position that, under the challenged executive order, religious congregations could convene indoors without limitation "if they believe in good faith that it is not possible" to convene outdoors, including based on practical limitations such as the "weather" or logistical concerns such as "space constraints outdoors." I further made clear that, under the Governor's order, "worship [wa]s an exempted activity from the mass gathering ban" and that all exempted activities—religious and non-religious—were subject to "the same rules."

67. **At oral argument, you suggested that local law enforcement would decide whether it was "impossible" for a religious entity to hold services outdoors. Do you regret this approach?**

Response: Respectfully, this is not what I stated at the hearing. Instead, I made clear that any religious gathering could convene indoors with no capacity limitations if its congregants believed in good faith that it was not possible to meet outdoors, including based on logistical concerns like the "weather" or "space constraints outdoors."

The district court disagreed with this interpretation of the order. The court principally was concerned by the fact that, under generally applicable North Carolina law, executive orders may be enforced by local law enforcement. The court therefore posited that any local sheriff could disagree with a religious congregation's judgment that it was not possible to hold religious services outdoors and therefore initiate an enforcement proceeding based on the law enforcement officer's own views.

I made clear that I did not believe this was a correct interpretation of the Governor's

order. In response to this concern, I stated: "I would respectfully disagree that that is what this order does. The order says that we trust any organization that is one of the exempted categories to determine [in] good faith whether it is possible to hold your service outdoors." I further stated that "unlike every other case where a challenge like this has arisen, there has never been a citation or any attempted enforcement." I emphasized that "[t]he Governor has categorically not tried to enforce this order in the ways that you describe." I explained that "faith leaders all across the state" had been making declarations that it was not possible for their congregations to gather outdoors and therefore convening indoors, and that "there ha[d] been no enforcement activity" against those religious gatherings anywhere in the State of North Carolina. And I emphasized that, because the Governor did not interpret the order to allow enforcement where a congregation believed in good faith that it was not possible to convene outdoors, any such hypothetical enforcement activity would be outside the bounds of the order.

Finally, I made clear that any attempt to question the sincerity of a congregation's belief by local law enforcement would violate the law. In response to the court's inquiry that the order "would … require some deputy sheriff to assess whether the belief of a certain person was sincerely held in saying we need to be inside, more than 10 of us," I responded: "To be absolutely clear, no. Absolutely not." I explained: "Under established precedent, the validity of a sincerely expressed religious belief is not going to be questioned by a court or by a law enforcement officer."

68. **Given your experience clerking at the Supreme Court, how do you reconcile the decision to let law enforcement determine the feasibility of outdoor worship with the Court's free exercise doctrine?**

Response: Please see my response to question 67. As described above, I made clear at the hearing that the Governor's position was that law enforcement officers did *not* have the authority to determine the feasibility of outdoor worship. I emphasized repeatedly that any enforcement action that questioned the good faith judgment of a religious congregation that it was not possible to convene outdoors would be contrary to both the terms of the Governor's executive order as well as "established precedent" under the Free Exercise Clause.

The district court held that the Governor's order was not narrowly tailored and issued a temporary restraining order. In consultation with my office, the Governor chose not to appeal and instead issued a new executive order completely exempting all religious activities from any pandemic-related limitations. This decision was made at a time, early in the pandemic, when the majority of states—led by members of both major political parties—imposed restrictions on mass gatherings of all kinds, and when many appellate courts, including the Supreme Court, had declined to enjoin similar or more-restrictive executive orders.

69. **In a 2007 article for The Guardian titled, "Pedophilia, the American Way" you criticized American practices concerning sex offenders and suggested that other countries should not simply mimic these practices. What American practices**

specifically concerned you?

Response: The article's overarching thesis is that other countries should consider following the American practice of adopting "Jessica's Laws" that impose lengthy mandatory minimum sentences for persons convicted of sexually abusing children. As I wrote, "the most simple, and only categorically effective, way to prevent recidivism" among child sex offenders is "longer sentences." I had no role in selecting the article's title.

I discussed two alternative policies that other countries had been considering. First, I discussed sex-offender registration laws that require offenders to register with the state and impose restrictions on where they can work and visit. I did not criticize these kinds of registration laws. Instead, I merely noted that "*some* claim" that these laws are not effective in reducing recidivism. Second, I discussed rehabilitation programs that seek to reintegrate offenders into society. With respect to these programs, I did question whether they may be "ultimately ineffective in reducing recidivism." I discussed both of these policies to support my thesis that longer criminal sentences are the "only categorically effective" way to prevent recidivism, and so other countries should consider a policy of imposing lengthy mandatory minimum sentences for child sexual abuse.

In my role as Solicitor General, I have led the State's defense of laws designed to prevent and punish child sexual abuse. For example, on multiple occasions, I have successfully defended the constitutionality of the State's sex-offender registration scheme. In one of these cases, where I served as lead counsel and presented oral argument, the Fourth Circuit recently ruled in my clients' favor and rejected a constitutional challenge to North Carolina's registration law. *See Nat'l Ass'n for Rational Sex Offense Laws v. Stein*, No. 23-2040, 2024 WL 3732494 (4th Cir., Aug. 9, 2024). I have also, on multiple occasions, represented the State in criminal appeals involving sex crimes, including crimes against minors.

70. **If not America's model, what model should other countries follow for handling sex offenders?**

Response: Please see my response to question 69. In the referenced article, I recommended that other countries consider following the American practice of adopting "Jessica's Laws" that impose lengthy mandatory minimum sentences for persons convicted of sexually abusing children. As I wrote, "the most simple, and only categorically effective, way to prevent recidivism" among child sex offenders is "longer sentences."

71. **Based on your critique, how should countries effectively punish sex offenders to avoid a "deficit of creativity" in their legal approaches?**

Response: Please see my response to question 69. In the referenced article, I recommended that other countries consider following the American practice of adopting "Jessica's Laws" that impose lengthy mandatory minimum sentences for persons

convicted of sexually abusing children. This policy solution may not be the most creative one. But as I wrote, “longer sentences” are “the most simple, and only categorically effective, way to prevent recidivism” among child sex offenders.

Questions for the Record from Senator Tillis to Ryan Y. Park, nominee for United States Judge for the Fourth Circuit Court of Appeals

1. Please confirm or deny that you were the author of the following published articles:

a. *Paedophilia, the American way.* Published in the Guardian on May 2, 2007.

Response: I confirm that I authored this article. I had no role in selecting its title. The article's overarching thesis is that other countries should consider following the American practice of adopting "Jessica's Laws" that impose lengthy mandatory minimum sentences for persons convicted of sexually abusing children. As I wrote, "the most simple, and only categorically effective, way to prevent recidivism" among child sex offenders is "longer sentences."

b. *The criticism of Ruth Bader Ginsburg ignores much of the nation's history.* Published in the Washington Post on July 14, 2016.

Response: I confirm that I co-authored this article. I had no role in selecting its title. I co-authored this article in an ill-advised attempt to defend the Supreme Court Justice for whom I clerked from public criticism. The decision to co-write the article was a mistake, as were the words and arguments used in the article. I regret the decision to co-author it and do not stand by it today.

2. During your hearing on July 31, 2024, you were asked about *Berger v. North Carolina State Conference of the NAACP*. Please further explain your involvement in that case, including answering the following:

Response: This case involves a constitutional challenge to a voter ID law enacted by the North Carolina General Assembly. Since the lawsuit was filed, the Attorney General has been representing the Board of Elections in defense of the law. The state's legislative leaders sought to intervene to defend the law alongside the Attorney General. The district court denied the intervention motion, and also entered a preliminary injunction against the law. The Attorney General appealed the preliminary injunction; the legislators also appealed the denial of their motion to intervene. Both appeals were successful, and the case is now back on remand in the district court—where lawyers from both the Department of Justice and the legislative leaders recently defended the law alongside one another at trial. The case remains pending in the trial court. I have had no role in this case at the trial level.

On appeal, I assisted in the supervision of both the merits appeal and the intervention appeal to the Fourth Circuit. As mentioned, the Attorney General prevailed in the merits appeal. That appeal was decided based on the record developed by the Attorney General in the trial court, thus negating the legislative leaders' concern that the Department of Justice's trial attorneys had not adequately developed the record below. *See N.C. State Conf. of the NAACP v. Raymond*, 981 F.3d 295, 311 (4th Cir. 2020).

In the intervention appeal, a panel of the Fourth Circuit held that the legislative leaders should have been allowed to intervene. I represented the Board in filing a petition to the en banc Fourth Circuit, and later a brief to the Supreme Court. That petition and brief never opposed the intervention of the legislative leaders, and repeatedly explained that intervention was likely proper. Instead, those filings argued that any decision on intervention should reflect that the Board and the Attorney General were adequately defending the law.

For example, the brief that I submitted to the Supreme Court repeatedly agreed with the legislative leaders that intervention was likely appropriate. It explained that the leaders "often are granted permissive intervention in similar cases under Rule 24(b) [of the Rules of Civil Procedure], and State Respondents do not oppose such relief here." State Resp. Br. at 55, *Berger v. N.C. State Conf. of the NAACP*, No. 21-248 (S. Ct.). As I explained, that rule allows a federal court to "permit anyone to intervene," if they satisfy certain requirements. *Id.* The brief stated explicitly that the Board and Attorney General "have never disputed that [the leaders] satisfy these threshold requirements." *Id.* The brief went on to "reiterate that [the Board and Attorney General] do not oppose, and have never opposed, allowing [the legislative leaders] to intervene in this case" and made clear that they "have no doubt that they could work cooperatively with [the leaders] to defend [the voter ID law] just as they are currently doing in many other cases." *Id.*

In its decision to allow intervention, the Supreme Court relied on the fact that the Board and Attorney General had, in the brief that I filed, made an explicit "concession that the legislative leaders *may* intervene permissively under Rule 24(b)." *Berger v. N.C. State Conf. of the NAACP* 597 U.S. 179, 197 (2022).

Finally, the brief emphasized that, regardless of how the Court ruled on intervention, the Attorney General and Board of Elections "stand ready to mount a vigorous defense of the challenged law" and "are confident that, no matter what happens in this [intervention] appeal, they will ultimately prevail in proving that [the challenged law] is fully consistent with federal law." State Resp. Br. at 1-2.; *see also id.* 2-5, 13-16 (explaining at length the substantive reasons why the voter ID law was lawful).

a. Did you or the North Carolina Department of Justice (NCDOJ) advocate for or otherwise support the ability of North Carolina state legislators to intervene in the case?

Response: As explained above, I repeatedly conveyed the Board's and the Attorney General's position that they did not oppose the leaders' intervention, but that any decision on intervention should reflect that the Board and Attorney General were adequately defending the law. I further conceded that the legislative leaders should be allowed to intervene permissively under Rule 24(b) of the Rules of Civil Procedure.

b. Did you or the NCDOJ advocate against or otherwise oppose the ability of North Carolina state legislators to intervene in the case?

Response: No, I never advocated against or otherwise opposed the ability of North Carolina state legislators to intervene in the case. To my knowledge, neither did anyone else at the North Carolina Department of Justice.

3. Please explain your work on amicus briefs for the North Carolina Attorney General (NCAG) in cases where he has recused himself, including answering the following:

a. Have you ever worked on an amicus brief for the NCAG on a case where the NCAG has recused himself?

Response: Yes. Based on my recollection and a diligent review of my records, I believe that I have worked on three cases in this posture: *Common Cause v. Lewis*, *Harper v. Hall*, and *Pierce v. North Carolina State Board of Elections*. All three of these cases involved challenges to North Carolina legislative districting maps. In all three cases, I represented both the Governor and the Attorney General and conveyed their views to the courts that the redistricting maps were unlawful. In these cases, as in all my cases, I served as an advocate representing my clients, and fulfilled my professional obligations to present the best possible arguments for their positions, without regard to any personal views I might hold.

b. Have you ever worked on an amicus brief for the NCAG on a case where he recused himself, while other attorneys from the NCDOJ represented a plaintiff, defendant, or intervener in the case?

Response: Yes. In all three of the cases discussed above, other attorneys in the North Carolina Department of Justice represented defendants in the case.

c. Have you ever worked on an amicus brief for the NCAG where he recused himself, while other attorneys from the NCDOJ represented a plaintiff, defendant, or intervener in the case, and the amicus brief advocated for a position adverse to the interests of the party or parties being represented by other NCDOJ attorneys?

Response: As mentioned, in all three of the cases discussed above, other attorneys in the North Carolina Department of Justice represented defendants in the case. Those attorneys generally took no position on the ultimate merits of the claims in question. The legislative leaders were either named defendants or intervened as defendants in all three cases and defended the claims on the merits.

4. Have you donated to a political campaign or committee supporting Josh Stein for elected office, while you worked the NCDOJ? If so please explain the situation that lead to this.

Response: Based on a diligent search of my records and publicly available sources, I believe that I have donated twice to Josh Stein's political campaigns while working for the North Carolina Department of Justice, for a total of $281. I recall doing so in response to email solicitations from the campaign. I did so on my own volition, and in my personal capacity as a citizen. Both donations were before the party primary, and were therefore to his primary campaign. As a

judicial nominee, I am now bound by the Code of Conduct of United States Judges, which bars me from engaging in political activity.

5. In light of the proliferation of artificial intelligence, in your opinion, is there any need for new forms of intellectual property protection – e.g., sui generis rights for data/datasets, which are used to train artificial intelligence models, and/or for already trained artificial intelligence models?

Response: I have not closely studied the issue of whether the proliferation of artificial intelligence may warrant the creation of new forms of intellectual property protection. This issue raises many complex policy questions that are principally for Congress to study, deliberate on, and decide. *See* U.S. Const. art. I, § 8, cl. 8 (providing that Congress has the authority "[t]o 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 confirmed, I will faithfully apply any laws enacted by Congress in this area of law, consistent with applicable precedent from the Supreme Court and Fourth Circuit.

6. What are you thoughts regarding the use tools, such as software that relies on some form of artificial intelligence, by those participating in court proceedings?

Response: I have not yet closely studied this issue, but I would expect to do so if confirmed as a judge. Artificial intelligence is an incredibly powerful tool that poses both opportunities and potential risks to the legal system. I understand that many lawyers are already beginning to make use of artificial intelligence tools to more efficiently and effectively complete legal tasks. However, the demonstrated propensity of AI tools to "hallucinate" legal precedents is just one of many examples showing that lawyers and courts should proceed cautiously and deliberately in this space. I believe that the entire legal community—including state and federal courts, practitioners, academics, and policymakers in Congress and elsewhere—should work together to extensively study the proper use of artificial intelligence in court proceedings and the legal system more broadly.

7. It is imperative to protect U.S. intellectual property from theft by other countries and maintain strong domestic patent rights. What are your thoughts regarding anti-suit injunctions, especially their potential to negatively impact the litigation of patent rights domestically?

Response: I have not closely studied this issue. However, I am aware that certain foreign entities have sought to use anti-suit injunctions in foreign courts to limit the rights of parties to vindicate their intellectual property rights in U.S. courts. My understanding is that this issue is being actively contested in ongoing and potentially impending litigation. I am therefore precluded by the Code of Conduct for United States Judges from commenting substantively on this issue. I further understand that a bipartisan group of Senators, including yourself, has introduced a bill to address this issue. Whether to enact this or any legislation to address the issue of anti-suit injunctions is a policy question for Congress to study, deliberate on, and decide. *See* U.S. Const. art. I, § 8, cl. 8.