Senator Lindsey Graham, Ranking Member
Questions for the Record
Ms. April Perry
Nominee to be United States District Judge for the Northern District of Illinois

1. **You were the Chief Ethics Officer and Chief Deputy State's Attorney under Kimberly Foxx, Cook County State's Attorney, during *People of the State of Illinois v. Jussie Smollett*, No. 19 CR 0310401 (the "Initial Smollett case"). As you are aware, Smollett had staged a fake hate crime against himself—costing the city of Chicago approximately $130,000 to investigate what would later be revealed to be a hoax engineered by Smollett. The Cook County State's Attorney's Office (CCSAO) made the decision in 2019 to dismiss the sixteen charges against Smollett in return for Smollett performing sixteen hours of community service and forfeiting his $10,000 bond. Public reporting and a later investigation into this decision revealed that State's Attorney Foxx did not properly recuse herself from this case under Illinois law.**

   A subsequent investigation and report from Special Prosecutor Dan K. Webb (report dated August 17, 2020) concluded that the Cook County State's Attorney's Office engaged in a substantial abuse of direction and made false statements to the public regarding Foxx's recusal and her alleged sequestration from the Smollett case.

   a. **Please explain in detail your involvement in this case, including what recommendations you made as the Chief Ethics Officer and whether your recommendations were followed.**

      Response: My work as the Chief Ethics Officer and Chief Deputy State's Attorney for the CCSAO is governed by the ethical rules for Illinois attorneys set forth in the Illinois Rules of Professional Conduct. These Rules include certain ongoing obligations of confidentiality, and I am therefore precluded from answering this question except by reference to information that was never confidential, or which has become generally known via publication of the Special Prosecutor's report. In an effort to answer the question in as fulsome of a manner as is possible given the aforementioned ethical constraints, the below answer therefore relies entirely upon information in the Special Prosecutor's report and other non-confidential information.

      The Special Prosecutor's 59-page report on this matter is based upon a lengthy investigation which included interviewing 43 witnesses and reviewing more than 120,000 pages of documents as well as text messages and audio recordings. *The Office of the Special Prosecutor's Summary of Its Final Conclusions, Supporting Findings and Evidence Relating to the Cook County State's Attorney's Office's and the Chicago Police Department's Involvement in the Initial Smollett Case*, Special Prosecutor Dan K. Webb, Aug. 17, 2020 at 5-7. As the report notes, I was not a decision-maker with respect to the charging or dismissal of the initial

Smollett case. *Id.* at 5. Moreover, to the extent the Special Prosecutor concluded that there were abuses of discretion relating to the decision-making process and the public statements made about the charging and dismissal, my conduct was not implicated in any of those actions or statements. *Id.* at 8-23.

Specifically, the report notes that "many interviewees, including…April Perry…disagreed with the fact Mr. Smollett did not accept responsibility and/or that he did not enter into a formal diversion program." *Id.* at 10. The report continues, "many interviewees, including April Perry…thought that the fact that Mr. Smollett only paid $10,000 was low given the amount [the Chicago Police Department] spent investigating the case and the fact that Mr. Smollett likely has the means to pay full restitution and/or that $10,000 did not seem consistent with the CCSAO goal to make victims as whole as possible, when the defendant has the financial means to do so, which they assumed Mr. Smollett likely did." *Id*. Additionally, the report notes that "many interviewees, including…April Perry…were surprised by the speed of the dismissal." *Id*. at 9. The report further describes that "Ms. Perry explained to the [Office of the Special Prosecutor] that [the First Assistant State's Attorney] told her about the terms of the dismissal the day before the dismissal hearing," which precipitated a conversation about whether statutory requirements for offering a deferred prosecution program had been met. *Id.* at 14, n. 7. Per the report, "Ms. Perry told the OSP she actually walked through a printout of the [relevant] statute…and asked whether various requirements were part of the agreement with Mr. Smollett. She said that she told [the First Assistant] that the resolution terms did not align with the [relevant] statute." *Id*.

With regard to the State's Attorney's recusal, the Special Prosecutor's report states that "State's Attorney Foxx decided to recuse herself on February 9, 2019 after her Chief Ethics Officer, April Perry, informed her about a rumor within CPD that [the State's Attorney] was related to or had a relationship with Mr. Smollett or his family." *Id.* at 24-25. Per the report, on February 20, after the State's Attorney had publicly announced her decision to recuse, the appellate supervisor for the CCSAO notified several members of the CCSAO Executive Staff that Illinois law sets out a procedure for recusal which had not yet been followed. *Id*. at 25. The Special Prosecutor's report notes that the proper procedure to follow under Illinois law to complete the recusal would have been to file a petition with the court seeking the appointment of a special prosecutor. *Id.* The report states that "Ms. Perry told the OSP that she recommended that the CCSAO seek appointment of a special prosecutor, and she proceeded to draft a petition" which was then emailed to the First Assistant for his review. *Id.* at 15. "Ms. Perry told the OSP her recommendation was not implemented." *Id.* Specifically, "Ms. Perry told the OSP that [the First Assistant] informed her the CCSAO would not be filing a petition to appoint a special prosecutor approximately 20 minutes after she sent him a draft petition." *Id.* at 26, n. 28.

According to the Special Prosecutor's report, the First Assistant "informed [the State's Attorney] that [the appellate supervisor] had concluded, based on specific analysis of Illinois law, that her recusal was legally improper" but the State's Attorney decided not to seek appointment of a special prosecutor. *Id.* at 25-26. The report also notes that "State's Attorney Foxx told the OSP that she did not make any effort to talk to…Ms. Perry, her Chief Ethics Officer, to better understand the law on this important legal issue." *Id*. at 26.

The Special Prosecutor's report alleges that in March through May 2019, the State's Attorney made a series of false or misleading statements to the press about her interactions with Smollett's family members after she had agreed to recuse herself from the case. *Id*. at 27. I was not involved in any way in either the State's Attorney's private communications with the Smollett family or the State's Attorney's media statements. *Id*. at 26-27.

Ultimately, the Special Prosecutor concluded that the only potential violation of the Illinois Rules of Professional Conduct involved in the Smollett matter arose from allegedly false or misleading statements to the media by the State's Attorney and First Assistant State's Attorney. *Id.* at 29. In 2021, the Special Prosecutor referred the matter to the Illinois Attorney Registration and Disciplinary Commission (ARDC) for further investigation and possible charges involving violations of the Rules of Professional Conduct. *Id*. The ARDC has not brought charges against any member of the CCSAO arising from the Smollett matter.

I tendered oral notice of my intent to resign from the CCSAO in March 2019 and my written letter of resignation was submitted in April 2019. Following that resignation, I participated fully in the investigations conducted by the Cook County Office of the Inspector General and Special Prosecutor. No findings of wrongdoing have ever been made relating to my conduct in the Smollett matter.

b. In a statement to the media, Kimberly Foxx said: "[r]egarding recusal, I followed the advice and counsel of my then Chief Ethics Officer [April Perry]."

i. Was this statement accurate? Please explain why or why not.

Response: My work as the Chief Ethics Officer and Chief Deputy State's Attorney for the CCSAO is governed by the ethical rules for Illinois attorneys set forth in the Illinois Rules of Professional Conduct. These Rules include certain ongoing obligations of confidentiality, and I am therefore precluded from answering this question except by reference to information that was never confidential, or which has become generally known via publication of the Special Prosecutor's report. In an effort to answer the question in as fulsome of a manner as is possible given the aforementioned ethical constraints, the below answer relies entirely upon information that has been made public in the Special Prosecutor's report.

The Special Prosecutor's report states that "State's Attorney Foxx decided to recuse herself on February 9, 2019 after her Chief Ethics Officer, April Perry, informed her about a rumor within CPD that [the State's Attorney] was related to or had a relationship with Mr. Smollett or his family." *Id.* at 24-25. Per the report, on February 20, after the State's Attorney had publicly announced her decision to recuse, the appellate supervisor for the CCSAO notified several members of the CCSAO Executive Staff that Illinois law sets out a procedure for recusal which had not yet been followed. *Id*. at 25. The Special Prosecutor's report notes that the proper procedure to follow under Illinois law to complete the recusal would have been to file a petition with the court seeking the appointment of a special prosecutor. *Id.* The report states that "Ms. Perry told the OSP that she recommended that the CCSAO seek appointment of a special prosecutor, and she proceeded to draft a petition" which was then emailed to the First Assistant for his review. *Id.* at 15. "Ms. Perry told the OSP her recommendation was not implemented." *Id.* Specifically, "Ms. Perry told the OSP that [the First Assistant] informed her the CCSAO would not be filing a petition to appoint a special prosecutor approximately 20 minutes after she sent him a draft petition." *Id.* at 26, n. 28.

According to the Special Prosecutor's report, the First Assistant "informed [the State's Attorney] that [the appellate supervisor] had concluded, based on specific analysis of Illinois law, that her recusal was legally improper" but the State's Attorney decided not to seek appointment of a special prosecutor. *Id.* at 25-26. The report also notes that "State's Attorney Foxx told the OSP that she did not make any effort to talk to…Ms. Perry, her Chief Ethics Officer, to better understand the law on this important legal issue." *Id*. at 26

c. Please describe any instance that you believe Kimberly Foxx misled or made misrepresentations to you or the public within the context of the Smollett case.

Response: My work as the Chief Ethics Officer and Chief Deputy State's Attorney for the CCSAO is governed by the ethical rules for Illinois attorneys set forth in the Illinois Rules of Professional Conduct. These Rules include certain ongoing obligations of confidentiality, and I am therefore precluded from answering this question except by reference to information that was never confidential, or which has become generally known via publication of the Special Prosecutor's report. My above answer to Question 1a provides as fulsome of an answer as I am permitted by ethical rules to provide about my interactions with the State's Attorney.

With respect to the State's Attorney's statements to the public, the Special Prosecutor's report lays out a number of public statements by the State's Attorney that the Special Prosecutor concluded were false or misleading based upon the facts gathered during the Special Prosecutor's investigation. *Id*. at 16-28. I was

not involved in the alleged misrepresentations. *Id*. I am precluded by the Code of Conduct for United States Judges and by the Illinois Rules of Professional Conduct from sharing any personal opinion about the merits of the Special Prosecutor's report or the appropriateness of the State's Attorney's statements to the media.

d. In hindsight, would you have done anything differently with respect to your role in the Smollett case?

Response: It is an ethics officer's and lawyer's job to provide the best advice and guidance possible based upon the facts known to them at the time, and I believe I did so while at the CCSAO. That said, my authority was limited in a way familiar to all lawyers: I had the ability to give advice, and my client retained the discretion as to whether to follow it. To the extent a client persists in conduct with which the lawyer has a fundamental disagreement, the sole recourse available to a lawyer is to terminate the relationship consistent with the Rule of Professional Conduct 1.16, which requires that the lawyer continue to protect the client's interests by giving reasonable notice and allowing time for employment of new counsel. I tendered oral notice of my intent to resign from the CCSAO in March 2019, and my written letter of resignation was submitted in April 2019. Following that resignation, I participated fully in the investigations conducted by the Cook County Office of the Inspector General and Office of the Special Prosecutor. No findings of wrongdoing have ever been made relating to my conduct in the Smollett matter.

2. Are you a citizen of the United States?

Response: Yes

3. 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.**

Response: I have never been a citizen of another country.

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

Response: No.

5. **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.

6. **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 Supreme Court has sometimes considered English common law when trying to determine the original public meaning of a particular constitutional provision. S*ee, e.g., New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1, 39-40 (2022); *Giles v. California*, 554 U.S. 353, 358-63 (2008). As a lower court judge, I would follow Supreme Court and Seventh Circuit binding precedent for any questions of constitutional interpretation without consideration of foreign law apart from what the precedent dictates.

7. **Please explain whether you agree or disagree with the following statement: "The judgments about the Constitution are value judgments. Judges exercise their own independent value judgments. You reach the answer that essentially your values tell you to reach."**

   Response: I disagree. A judge's personal values should play no role in questions of constitutional interpretation.

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

   Response: Yes. *See, e.g., Sosa v. Alvarez-Machain*, 542 U.S. 692, 734-35 (2004) (distinguishing between treaties and international agreements which may have the force of law, and international statements of principles which do not).

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

   Response: One way the Supreme Court has described prosecutorial discretion is that "the Executive Branch possesses authority to decide how to prioritize and how aggressively to pursue legal actions against defendants who violate the law." *United States v. Texas*, 599 U.S. 670, 678-79 (2023) (collecting cases that describe in varying ways the concept of prosecutorial discretion).

10. **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.

11. 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.

12. 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.

13. Please describe the relevant law governing how a prisoner in custody under sentence of a federal court may seek and receive relief from the sentence.

Response: A prisoner in custody under sentence of a federal court may file a direct appeal under 28 U.S.C. § 1291, collaterally attack the sentence under 28 U.S.C. § 2255, file a petition for writ of habeas corpus under 28 U.S.C. § 2241, and/or file a motion for modification of sentence under 18 U.S.C. § 3582(c).

14. Please explain the facts and holding of the Supreme Court decisions in *Students for Fair Admissions, Inc. v. University of North Carolina* and *Students for Fair Admissions Inc. v. President & Fellows of Harvard College*.

Response: *Students for Fair Admissions, Inc. v. University of North Carolina* and *Students for Fair Admissions Inc. v. President & Fellows of Harvard College* involved challenges to college admissions processes under Title VI of the Civil Rights Act and the Equal Protection Clause of the Fourteenth Amendment. The Supreme Court held that neither college's admissions policies would survive strict scrutiny analysis in that their use of race during the admissions process did not have a compelling purpose nor was their use of race necessary to achieve their purposes. Specifically, the Supreme Court noted that the colleges' admissions processes "lack sufficiently focused and measurable objectives warranting the use of race, unavoidably employ race in a negative manner,

involve racial stereotyping, and lack meaningful end points." *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181, 230 (2023).

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

Response: Yes.

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

Response: I was a member of the hiring committee as an Assistant U.S. Attorney at the U.S. Attorney's Office for the Northern District of Illinois. Additionally, I have participated in candidate interviews and given feedback to the hiring individuals while at the Cook County State's Attorney's Office, Ubiety Technologies, Inc., and GE HealthCare.

16. 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.

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

Response: No.

18. 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.

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

Response: Not applicable.

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

Response: Yes. *See Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181, 206 (2023).

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

Response: The plaintiff in *303 Creative* argued that the Colorado Anti-Discrimination Act compelled her to create wedding websites for marriages which she did not endorse, in violation of the First Amendment. The Supreme Court held that the First Amendment protects a website creator's right to refuse to create websites which express opinions with which the creator disagrees. *See 303 Creative LLC v. Elenis*, 600 U.S. 570 (2023).

21. 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. This portion of the *Barnette* opinion is binding precedent, and I would apply it faithfully.

22. 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: In determining whether a law that regulates speech is "content-based," and therefore subject to strict scrutiny, or "content-neutral," I would follow Supreme Court and Seventh Circuit precedent. The Supreme Court has held that regulations of speech are content-based if they apply "to particular speech because of the topic discussed or the idea or message expressed." *See City of Austin, Texas v. Reagan National Advertising of Austin, LLC*, 596 U.S. 61, 69 (2022). To that end, speech-restrictions may be content-based if they apply to particular viewpoints or regulate speech based upon topic or subject matter. *Id*. at 70. Additionally, even a facially content-neutral regulation could be considered content-based if "there is evidence that an impermissible purpose or justification underpins" the regulation. *Id.* at 76.

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

Response: True threats of violence historically have been unprotected categories of communication. *See Counterman v. Colorado*, 600 U.S. 66, 74 (2023). The Supreme Court has defined true threats as "serious expressions conveying that a speaker means to commit an act of unlawful violence." *Id.* (internal quotations omitted). The statements must objectively be threats, in that the listener understands them to not be "jests, hyperbole, or other statements that when taken in context do not convey a real possibility that violence will follow." *Id.* There is also a subjective mental-state requirement of

recklessness on the part of the speaker, showing that the speaker understood the threatening character of the statements. *Id.* at 82.

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

Response: Questions of fact generally involve determinations as to "who did what, when or where, how or why." *U.S. Bank National Association v. Village at Lakeridge, LLC*, 583 U.S. 387, 394 (2018). The Supreme Court has noted that the distinction between questions of fact and law can sometimes be "vexing," while also noting that case law has developed categorizing many common questions. *Pullman-Standard v. Swint*, 456 U.S. 273, 287 (1982) ("treating issues of intent as factual matters for the trier of fact is commonplace"); *United States v. Ford*, 22 F.4th 687, 691 (7th Cir. 2022) ("we review the district court's fact finding on guideline issues for clear error and its legal interpretation of the Sentencing Guidelines de novo"); *Mucha v. King*, 792 F.2d 602, 605 (7th Cir. 1986) (noting that facts "which are found by applying a legal standard to a descriptive or historical narrative are governed by the clearly-erroneous rule," and further that "most courts treat legal characterizations (negligence, possession, ratification, principal place of business, etc.) as facts"). To the extent an issue presents a mixed question of fact and law, "a reviewing court should try to break such a question into its separate factual and legal parts, reviewing each according to the appropriate legal standard." *Google LLC v. Oracle America, Inc*., 593 U.S. 1, 24 (2021).

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

Response: 18 U.S.C. § 3553 instructs that judges consider all of these factors as well as several others when determining what sentence is sufficient but no greater than necessary in each particular case. If confirmed, I would follow 18 U.S.C. § 3553, refer to the advisory Sentencing Guidelines, and adhere to Supreme Court and Seventh Circuit precedent when sentencing defendants.

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

Response: If confirmed, I would apply all applicable Supreme Court precedent without reservation. As a judicial nominee, I am precluded by Canon 3(A)(6) of the Code of Conduct for United States Judges from commenting on whether I believe any particular Supreme Court decision was well-reasoned or poorly reasoned.

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

Response: If confirmed, I would apply all applicable Seventh Circuit precedent without reservation. As a judicial nominee, I am precluded by Canon 3(A)(6) of the Code of Conduct for United States Judges from commenting on whether I believe any particular Seventh Circuit decision was well-reasoned or poorly reasoned.

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

Response: 18 U.S.C. §1507 provides that "[w]hoever, 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. Nothing in this section shall interfere with or prevent the exercise by any court of the United States of its power to punish for contempt."

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

Response: I am not aware of any Supreme Court or Seventh Circuit opinion finding 18 U.S.C. §1507 unconstitutional. I am aware that the Supreme Court found a similar state law constitutional in *Cox v. Louisiana*, 379 U.S. 559 (1965). Were I to be confronted with a question as to the constitutionality of any statute as a District Judge, I would carefully consider binding precedent as well as the facts of the case and arguments of the parties before making any decision.

30. 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: Yes. As a judicial nominee, I am generally precluded by Canon 3(A)(6) of the Code of Conduct for United States Judges from commenting on whether I believe a particular Supreme Court decision was correctly decided. However, the legal issues presented in *Brown v. Board of Education* are so foundational and firmly part of our constitutional framework that they are unlikely to be the subject of future litigation. Therefore, like other judicial nominees who have preceded me, I am comfortable expressing my view that *Brown* was correctly decided.

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

Response: Yes. As a judicial nominee, I am generally precluded by Canon 3(A)(6) of the Code of Conduct for United States Judges from commenting on whether I believe a particular Supreme Court case was correctly decided. However, the legal issues presented in *Loving v. Virginia* are so foundational and firmly part of our constitutional framework that they are unlikely to be the subject of future litigation. Therefore, like other judicial nominees who have preceded me, I am comfortable expressing my view that *Loving* was correctly decided.

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

Response: As a judicial nominee, I am precluded by Canon 3(A)(6) of the Code of Conduct for United States Judges from commenting on whether I believe a particular Supreme Court case was correctly decided. If confirmed, I would faithfully apply all binding precedent – including *Griswold v. Connecticut*.

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

Response: As a judicial nominee, I am precluded by Canon 3(A)(6) of the Code of Conduct for United States Judges from commenting on whether I believe a particular Supreme Court case was correctly decided. If confirmed, I would faithfully apply all binding precedent. *Roe v. Wade* was overturned by *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022), and I would therefore faithfully apply *Dobbs*.

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

Response: As a judicial nominee, I am precluded by Canon 3(A)(6) of the Code of Conduct for United States Judges from commenting on whether I believe a particular Supreme Court case was correctly decided. If confirmed, I would apply all binding precedent faithfully. *Planned Parenthood v. Casey* was overturned by *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022), and I would therefore faithfully apply *Dobbs*.

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

Response: As a judicial nominee, I am precluded by Canon 3(A)(6) of the Code of Conduct for United States Judges from commenting on whether I believe a particular Supreme Court case was correctly decided. If confirmed, I would faithfully apply all binding precedent – including *Gonzales v. Carhart*.

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

Response: As a judicial nominee, I am precluded by Canon 3(A)(6) of the Code of Conduct for United States Judges from commenting on whether I believe a particular Supreme Court case was correctly decided. If confirmed, I would faithfully apply all binding precedent – including *District of Columbia v. Heller*.

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

Response: As a judicial nominee, I am precluded by Canon 3(A)(6) of the Code of Conduct for United States Judges from commenting on whether I believe a particular Supreme Court case was correctly decided. If confirmed, I would faithfully apply all binding precedent – including *McDonald v. City of Chicago*.

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

Response: As a judicial nominee, I am precluded by Canon 3(A)(6) of the Code of Conduct for United States Judges from commenting on whether I believe a particular Supreme Court case was correctly decided. If confirmed, I would faithfully apply all binding precedent – including *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*.

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

Response: As a judicial nominee, I am precluded by Canon 3(A)(6) of the Code of Conduct for United States Judges from commenting on whether I believe a particular Supreme Court case was correctly decided. If confirmed, I would faithfully apply all binding precedent – including *New York State Rifle & Pistol Association v. Bruen*.

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

Response: As a judicial nominee, I am precluded by Canon 3(A)(6) of the Code of Conduct for United States Judges from commenting on whether I believe a particular Supreme Court case was correctly decided. If confirmed, I would faithfully apply all binding precedent – including *Dobbs v. Jackson Women's Health*.

l. **Were *Students for Fair Admissions, Inc. v. University of North Carolina* and *Students for Fair Admissions Inc. v. President & Fellows of Harvard College* correctly decided?**

Response: As a judicial nominee, I am precluded by Canon 3(A)(6) of the Code of Conduct for United States Judges from commenting on whether I believe a particular Supreme Court case was correctly decided. If confirmed, I would faithfully apply all binding precedent – including *Students for Fair Admissions, Inc. v. University of North Carolina* and *Students for Fair Admissions Inc. v. President & Fellows of Harvard College*.

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

Response: As a judicial nominee, I am precluded by Canon 3(A)(6) of the Code of Conduct for United States Judges from commenting on whether I believe a particular Supreme Court case was correctly decided. If confirmed, I would faithfully apply all binding precedent – including *303 Creative LLC v. Elenis*.

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

Response: The Supreme Court has held that "when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's unqualified command." *New York State Rifle & Pistol Association, Inc., v. Bruen*, 597 U.S. 1, 17 (2022) (internal citation omitted). The Supreme Court further expanded upon this test in *United States v. Rahimi*, 144 S. Ct. 1889, 1898 (2024), stating that a court "must ascertain whether the new law is 'relevantly similar' to laws that our tradition is understood to permit, 'applying faithfully the balance struck by the founding generation to modern circumstances.'"

32. 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?**

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?**

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?**

Responses to Questions 32a-c: No.

33. 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?**

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?**

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?**

Responses to Questions 33a-c: No.

34. 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?**
    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?**
    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?**
    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.**

Responses to Questions 34a-c: No.

35. 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?**
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?**
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?**
d. **Have you ever received any funding, or participated in any fellowship or similar program affiliated with the Open Society network?**

Responses to Questions 35a-d: No.

36. 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?**
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?**
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?**

Responses to Questions 36a-c: No.

37. 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?**
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?**
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?

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

Responses to Questions 37a-d: No.

38. 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?**

b. **Are you currently in contact with anyone associated with the Committee for a Fair Judiciary, including, but not limited to: Jeremy Paris, Erika West, Elliot Williams, Nancy Zirkin, and/or Joe Onek? If so, who?**
Have you ever been in contact with anyone associated with the Committee for a Fair Judiciary, including, but not limited to: Jeremy Paris, Erika West, Elliot Williams, Nancy Zirkin, and/or Joe Onek? If so, who?

Responses to Questions 38a-b: No.

39. 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?**

b. **Are you currently in contact with anyone associated with the American Constitution Society including, but not limited to Russ Feingold? If so, who?**

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?**

Responses to Questions 39a-c: No.

40. 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 March 1, 2024, I was informed by Senator Durbin's office and the White House Counsel's Office that Senator Durbin had recommended me as a potential candidate for nomination for an anticipated judicial vacancy. On March 5, 2024, I interviewed with attorneys from the White House Counsel's Office. Since then, I have

been in contact with officials from the Office of Legal Policy at the Department of Justice and the White House Counsel's Office. On April 24, 2024, the President announced his intent to nominate me.

41. 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: I did not talk with anyone associated with the organization Demand Justice during my selection process, and I am unaware of anyone doing so on my behalf.

42. 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: I did not talk with anyone associated with Alliance for Justice during my selection process, and I am unaware of anyone doing so on my behalf.

43. 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: I did not talk with anyone associated with Arabella Advisors, or its known subsidiaries, during my selection process, and I am unaware of anyone doing so on my behalf.

44. 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: I did not talk with anyone associated with the Open Society Foundation during my selection process, and I am unaware of anyone doing so on my behalf.

45. 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: I did not talk with anyone associated with the Fix the Court during my selection process, and I am unaware of anyone doing so on my behalf.

46. 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: I did not talk with anyone associated with The Raben Group or the Committee for a Fair Judiciary during my selection process, and I am unaware of anyone doing so on my behalf.

47. 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: I did not talk with anyone associated with the American Constitution Society during my selection process, and I am unaware of anyone doing so on my behalf.

48. 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 to Question 48 and all subparts: Following the announcement of President Biden's intent to nominate me as a U.S. District Judge, I discussed with officials from the Office of Legal Policy whether any changes to the Senate Judiciary Questionnaire that I had previously submitted as part of my earlier nomination to be U.S. Attorney for the Northern District of Illinois might be appropriate given the different nature of the two positions. Ultimately, I determined that no change should be made in the cases that I submitted, other than to substitute my most recent child exploitation trial in the place of an older child exploitation trial.

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

Response: On March 5, 2024, I interviewed with attorneys from the White House Counsel's Office. Since then, I have been in contact with officials at the Office of Legal Policy at the Department of Justice and the White House. On April 24, 2024, the President announced his intent to nominate me.

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

Response: I received written questions for the record on August 7 and 8, 2024. I reviewed each question and prepared my responses, reviewing my personal records and conducting

research as necessary. I submitted a draft of my answers to attorneys with the Office of Legal Policy at the Department of Justice, who provided limited feedback for my consideration. I then finalized and submitted my answers.

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

<u>April Perry, nominee to be U.S. District Judge for the Northern District of Illinois</u>
From 2004 to 2016, you served as an Assistant U.S. Attorney in the Northern District of Illinois, where you prosecuted gang and narcotic cases, public corruption cases, civil rights violations, and child exploitation cases. You also served as a Civil Rights & Hate Crimes Coordinator, Project Safe Childhood & Violence Against Women Act Coordinator, and as the Narcotics & Gangs Deputy Chief.

- **How have these experiences prepared you to serve as a federal district court judge?**

  Response: "The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done." *Berger v. United States*, 295 U.S. 78, 88 (1935). During my 12 years as a federal prosecutor, I took the Supreme Court's words in *Berger* very seriously and worked every day not for convictions, but for justice. To that end, I approached each case with an open mind, following the facts wherever they led with no pre-determined outcome or goal other than to serve justice. I also viewed it as my job to ensure that the investigation and prosecution were conducted fairly, and that the defendant's Fourth, Fifth, and Sixth Amendment rights were protected. These values – being a servant of justice and approaching each case fairly with an open mind – are also vital traits for district court judges and if I were so fortunate as to be confirmed I would continue to demonstrate each of them every day.

- **Can you describe one of the most significant cases that you prosecuted, and what you learned from that experience?**

  Former Chicago Police Department ("CPD") Commander Jon Burge's torture of suspects began in 1973. CPD suspended Burge in 1991 and fired him in 1993. But Burge's legacy of corruption still tainted Chicago when his trial for obstruction of justice and perjury began in 2010. Because Jon Burge's torture of suspects occurred more than 15 years before the trial began, the government did not have the types of evidence that federal prosecutors typically rely upon in their prosecutions, such as recordings, scientific tests, or testimony of undercover agents. We did not have any CPD officers willing to admit that they had witnessed any wrongdoing by Burge. Moreover, the individuals who Burge abused had lengthy criminal records and were convicted of violent crimes. Burge told several of them that if they ever said anything about having been abused, no one would believe their word over his. Despite these challenges, we were able to prove at trial beyond a reasonable doubt that Burge lied under oath in a civil deposition in which he denied knowing about or participating in the torture of suspects in CPD custody. Burge

was ultimately sentenced to four and a half years in prison, and his conviction was upheld on appeal.

I was the second-chair for the three-week trial and my role included direct and cross-examinations for numerous witnesses, including direct examinations for two of Burge's victims and a hostile CPD officer who had witnessed Burge's abuse and had grudgingly testified about it in the grand jury but who had no interest in cooperating at trial. I also presented the government's rebuttal argument at the conclusion of the trial. Finally, I drafted the appellate brief and argued the appeal before the Seventh Circuit. The conviction and sentence were both affirmed on appeal.

The *Burge* case taught me firsthand about the effect that one corrupt law enforcement officer can have on an entire community's ability to trust and respect the police, and how vital that trust and respect is for all other law enforcement officers to be able to do their jobs well. As Justice Brandeis once said: "If the government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy." *Olmstead v. United States*, 277 U.S. 438, 485 (1928). But I also learned that the reverse concept is true: when the government appropriately polices its own misconduct, punishing those who do not display the integrity that is demanded of them, it enhances community trust and respect for the police, and our community is safer. My deep belief in the importance of the integrity of our justice system led me to become the Civil Rights and Hate Crimes coordinator for the United States Attorney's Office for the Northern District of Illinois, after that to oversee the work of the Conviction Integrity Unit at the Cook County State's Attorney's Office, and then later to serve as a Hearing Officer for the Chicago Police Board.

Senator Hirono Questions for the Record for the July 31, 2024, Hearing in the Senate Judiciary Committee entitled "Nominations."

QUESTIONS FOR APRIL MICHELLE PERRY

Sexual Harassment

As part of my responsibility as a member of this committee to ensure the fitness of nominees, I ask each nominee to answer two questions:

QUESTIONS:

1. **Since you became a legal adult, have you ever made unwanted requests for sexual favors, or committed any verbal or physical harassment or assault of a sexual nature?**

   Response: No.

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

   Response: No.

Senator Mike Lee
Questions for the Record
April M. Perry to be United States District Judge for the Northern District of Illinois

1. How would you describe your judicial philosophy?

Response: I believe that judges are public servants whose goal is to ensure equal justice under the law. In order to achieve this goal, a judge must be diligent in learning the facts and law relevant to each case, impartial in applying the law to those facts, and open-minded when listening to and considering the arguments of the parties. Were I so fortunate as to be confirmed, I would approach each case and each litigant respectfully and humbly knowing that it is my job to ensure their case is handled with the integrity, fairness, and efficiency that our justice system demands.

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

Response: I would begin by consulting Supreme Court and Seventh Circuit precedent and faithfully apply the applicable precedent interpreting that same statutory language. If there was no binding precedent, I would interpret the statute based upon its plain meaning. If the statutory text was ambiguous, I would look at the structure, context, and design of the statute, and apply other canons of statutory construction as applicable. I would also consider as persuasive authority cases from the Supreme Court or Seventh Circuit interpreting analogous or similar statutory language, as well as cases from other jurisdictions.

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

Response: I would begin by consulting Supreme Court and Seventh Circuit precedent and faithfully apply the applicable precedent interpreting that constitutional provision. If there was no binding precedent, I would interpret the constitutional provision based upon its plain meaning. If the constitutional provision was ambiguous, I would apply the interpretive tools used by the Supreme Court for that constitutional provision. For example, in *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. 1 (2022), the Supreme Court used original public meaning when determining the scope of the Second Amendment's protections.

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

Response: The Supreme Court frequently resolves questions of constitutional interpretation by analyzing the text and original meaning of the constitutional provision at issue. S*ee, e.g., Kennedy v. Bremerton School District,* 597 U.S. 507, 535-36 (2022) ("an analysis focused on original meaning and history, this Court has

stressed, has long represented the rule rather than some exception within the Court's Establishment Clause jurisprudence") (internal quotations omitted); *District of Columbia v. Heller*, 554 U.S. 570 (2008) (utilizing the normal and ordinary meaning of the words of the Second Amendment at the time it was drafted in determining its scope); *Crawford v. Washington*, 541 U.S. 36, 42-43 (2004) (beginning with the text of the Sixth Amendment and then moving on to consider the historical background of the Confrontation Clause). I would faithfully follow Supreme Court and Seventh Circuit precedent in answering any questions of Constitutional interpretation.

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

Response: Please see my response to Question 2.

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 instructed that the plain meaning of a statute should normally be determined "in accord with the ordinary public meaning of its terms at the time of its enactment. After all, only the words on the page constitute the law adopted by Congress and approved by the President." *See Bostock v. Clayton County*, 590 U.S. 644, 654 (2020).

6. What are the constitutional requirements for standing?

Response: Article III standing requires that a plaintiff establish: (1) "injury in fact;" (2) "a causal connection between the injury and the conduct complained of"; and (3) that it is "'likely' as opposed to merely 'speculative' that the injury will be 'redressed by a favorable decision.'" *See Lujan v. Defenders 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: In *M'Culloch v. Maryland*, the Supreme Court held that the Necessary and Proper Clause of Article I, Section 8, of the U.S. Constitution gave Congress the implied power to establish a national bank. 17 U.S. 316, 421 (1819). In determining the scope of Congress's implied powers, the Supreme Court stated: "we think the sound construction of the constitution must allow to the national legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people." *Id.*

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: If a case presented to me involved the question of the constitutionality of a law enacted by Congress, I would evaluate the case based upon Supreme Court and Seventh Circuit precedent and consistent with my answer to Question 3, above. "The question of the constitutionality of action taken by Congress does not depend on recitals of the power which it undertakes to exercise." *Woods v. Cloyd W. Miller Co*., 333 U.S. 138, 144 (1948).

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 unenumerated rights that are "deeply rooted in this Nation's history and tradition…and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed." *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997) (internal quotations and citations omitted). The rights that the Supreme Court has found meet this standard include the right to marry, *Loving v. Virginia*, 388 U.S. 1 (1967), to not be sterilized without consent, *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942), to direct the education and upbringing of one's children, *Meyer v. Nebraska*, 262 U.S. 390 (1923), to marital privacy, *Griswold v. Connecticut*, 381 U.S. 479 (1965), and the right in certain circumstances to not undergo involuntary medical procedures, *Rochin v. California*, 342 U.S. 165 (1952).

10. What rights are protected under substantive due process?

Response: Please see my answer to Question 9, above.

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: If confirmed, I would follow all binding precedent of the Supreme Court and Seventh Circuit when seeking to determine the scope of substantive due process rights. *Lochner v. New York* was overturned by *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937) and subsequent Supreme Court cases and is therefore no longer binding precedent. *See Ferguson v. Skrupa*, 372 U.S. 726, 730 (1963) ("[i]t is now settled that States have power to legislate against what are found to be injurious practices in their internal commercial and business affairs, so long as their laws do not run afoul of some specific federal constitutional provision…").

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

Response: The Supreme Court has identified three broad categories of activity that Congress may regulate under its commerce power: (1) "the use of the channels of interstate commerce"; (2) "instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities"; and (3) "activities having a substantial relation to interstate commerce…*i.e.*, those activities that substantially affect interstate commerce." *United States v. Lopez*, 514 U.S. 549, 558-59 (1995).

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 recognized that classifications based upon nationality, race, alienage, and religion "are inherently suspect and subject to close judicial scrutiny." *Graham v. Richardson*, 403 U.S. 365, 372 (1971). A suspect class is one that is "saddled with such disabilities, or subject 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." *Massachusetts Board of Retirement v. Murgia*, 427 U.S. 307, 313 (1976).

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

Response: The separation of powers between the Legislative, Executive, and Judicial branches in Articles I, II, and III of the Constitution was considered by the Framers to be an essential part of our democracy. S*ee Stern v. Marshall,* 564 U.S. 462, 483 (2011) (quoting Federalist No. 78: "there is no liberty if the power of judging be not separated from the legislative and executive powers"); *Clinton v. City of New York*, 524 U.S. 417, 450 (1998) (Kennedy, J. concurring) (quoting Federalist No. 47: "[t]he accumulation of all powers, legislative, executive, and judiciary, in the same hands…may justly be pronounced the very definition of tyranny"). Moreover, "[b]y allocating specific powers and responsibilities to a branch fitted to the task, the Framers created a National Government that is both effective and accountable." *Loving v. United States*, 517 U.S. 748, 757 (1996).

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 a case were presented to me in which a party alleged that a branch of government had exceeded its constitutional authority, I would research and apply relevant Supreme Court and Seventh Circuit precedent in determining whether the allegation had merit. *See, e.g., Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952) (holding that the President was not acting within his constitutional power when he issued an order directing the Secretary of Commerce to take possession of and operate most of the nation's steel mills); *Bond v. United States*, 564 U.S. 211, 222 (2011) (noting that an individual can sometimes assert injury from governmental action taken in excess of the authority that federalism defines).

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

Response: I define empathy as being aware of and sensitive to the feelings of others. Empathy should play no role in a judge's consideration of the facts or law relevant to a case or the judge's conclusions in that case. That said, judges should be aware of and sensitive to the emotional complexities present in the cases they oversee and should treat everyone who enters their courtroom with dignity and respect.

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

Response: Invalidating a law that is constitutional and upholding a law that is unconstitutional are both wrong. If confirmed, I would work diligently to avoid committing either error.

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 researched or studied this issue, and therefore do not have an opinion on what may account for the described fluctuation. If confirmed, I would faithfully apply all Supreme Court and Seventh Circuit precedent to the cases before me, without being inappropriately judicially aggressive or judicially passive.

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

Response: Black's Law Dictionary defines judicial review as a "court's power to review the actions of other branches or levels of government; esp., the courts' power to invalidate legislative and executive actions as being unconstitutional." Black's Law Dictionary (11th ed. 2019). Black's Law Dictionary defines judicial supremacy as the doctrine "that interpretations of the Constitution by the federal judiciary in the exercise of judicial review, esp. U.S. Supreme Court interpretations, are binding on the coordinate branches of the federal government and the states." Black's Law Dictionary (11th ed. 2019).

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: The U.S. Constitution establishes a separation of powers through which judges interpret the Constitution, art. III, and elected officials can amend it, art. V. This process was utilized following the Dred Scott decision when Congress passed the Thirteenth and Fourteenth Amendments, which when ratified by ¾ of the states effectively negated the Supreme Court's holding in *Scott v. Sandford*. Regardless of any personal disagreements they may have, officials from all three branches of government are obligated by Article VI to support the Constitution.

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: Unlike the Executive Branch or Legislative Branch, which control the military and treasury, the Judicial Branch has no inherent power to ensure that its decisions are respected and followed. It is therefore incumbent on judges to issue well-reasoned opinions that demonstrate independence, integrity, and restraint in order to uphold the rule of law and ensure public trust in the Judicial Branch.

22. As a district court judge, you would be bound by both Supreme Court precedent and prior circuit 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: My analysis of each case would begin by consulting Supreme Court and Seventh Circuit precedent and faithfully applying the appropriate precedent. When applying precedent, a District Court should neither attempt to extend nor limit precedent based upon the judge's personal opinion about the quality of the reasoning used by the higher court.

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 the above quote or the context in which it was made. Black's Law Dictionary defines equity as "fairness; impartiality; evenhanded dealing."

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

Response: In my personal experience there can be a difference between equity (meaning fairness) and equality. For example, it is equitable to ensure that each of my children always has a pair of shoes that fits, but this does not mean every time one child outgrows their shoes the other child also gets a new pair. If faced with a question as a judge where the definitions of equity and equality became relevant, I would rely upon Supreme Court and Seventh Circuit precedent as well as appropriate statutory and legal definitions for those terms, rather than any personal beliefs about equity and equality.

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

Response: The Equal Protection Clause of the Fourteenth Amendment provides that "[n]o state shall…deny to any person within its jurisdiction the equal protection of the laws." U.S. Const., amend. XIV. I am unaware of any Supreme Court or Seventh Circuit precedent interpreting equal protection of the laws consistent with the definition of equity in Question 24. If confirmed, I would follow Supreme Court and Seventh Circuit precedent when determining the scope of Fourteenth Amendment protections.

27. How do you define "systemic racism?"

Response: I do not have a personal definition of the term "systemic racism," although I am aware that Merriam-Webster (online) defines "systemic racism" as "the oppression of a racial group to the advantage of another as perpetuated by inequity within interconnected systems (such as political, economic, and social systems)."

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

Response: I do not have a personal definition of the term "critical race theory," although I am aware that Merriam-Webster (online) defines it as "a group of concepts (such as the idea that race is a sociological rather than biological designation and that racism pervades society and is fostered and perpetuated by the legal system) used for

examining the relationship between race and the laws and legal institutions of a country and especially the United States."

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

Response: Please see my responses to Questions 27 and 28. I have not studied "critical race theory" or "systemic racism," nor has any party used those theories in any of the cases I have handled during my 20 years as an attorney.

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

Questions for the Record for April Michelle Perry, nominated to serve as United States District Judge for the Northern District of Illinois

I. Directions

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

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

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

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

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

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

II. Questions

1. **Is racial discrimination wrong?**

Response: Yes. It is also in many cases illegal. *See, e.g.,* Civil Rights Act of 1964.

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 has held that the Constitution protects unenumerated fundamental rights and liberties that are "deeply rooted in this Nation's history and tradition…and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed." *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997) (internal quotations and citations omitted). If a case were presented to me arguing that an as-yet unarticulated unenumerated right was at issue, I would analyze the claim consistent with binding Supreme Court and Seventh Circuit precedent, including *Washington v. Glucksberg*.

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

Response: I believe that judges are public servants whose goal is to ensure equal justice under the law. In order to achieve this goal, a judge must be diligent in learning the facts and law relevant to each case, impartial in applying the law to the facts, and open-minded when listening to and considering the arguments of the parties. Were I so fortunate as to be confirmed, I would approach each case and each litigant respectfully and humbly knowing that it is my job to ensure their case is handled with the integrity, fairness, and efficiency that our justice system demands. I have not studied the judicial philosophies of the Supreme Court Justices closely enough to know which is most analogous to my aforementioned beliefs.

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

Response: I understand originalism to refer to the theory that the Constitution should be interpreted based upon its original public meaning. The Supreme Court has used this method to define the scope of various constitutional provisions. S*ee, e.g., Kennedy v. Bremerton School District,* 597 U.S. 507, 535-36 (2022) ("an analysis focused on original meaning and history, this Court has stressed, has long represented the rule rather than the exception within the Court's Establishment Clause jurisprudence"); *District of Columbia v. Heller*, 554 U.S. 570, 576 (2008) ("in interpreting this text, we are guided by the principle that the Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning"). I would faithfully apply any and all interpretive methodologies used by the Supreme Court. In the areas of law where the Supreme Court has used originalism, I would also apply originalism.

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

Response: I understand the term "living constitutionalism" to have different meanings to different people, but to generally refer to the theory of constitutional interpretation which posits that the meaning of the constitution evolves over time. I have never used the term living constitutionalism, and I am not aware of it being used in any Supreme Court or Seventh Circuit case. If confirmed, I would faithfully apply the precedent of the Supreme Court and Seventh Circuit.

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 called upon to resolve a constitutional question of first impression with no applicable precedent from the Supreme Court or Seventh Circuit, I would begin by analyzing the text of the constitutional provision. If the constitutional provision was ambiguous, I would apply the interpretive tools previously used by the Supreme Court for that particular constitutional provision. For example, in *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. 1 (2022), the Supreme Court used original public meaning when determining the scope of the Second Amendment's protections. In the areas of law where the Supreme Court has used original public meaning, I would also use original public meaning.

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: No. Though the "Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated," its meaning is "fixed according to the understandings of those who ratified it." *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1, 28 (2022); *see also Bostock v. Clayton County*, 590 U.S. 644, 654 (2020) (a statute should be interpreted "in accord with the ordinary public meaning of its terms at the time of its enactment").

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

Response: The Constitution was "intended to endure for ages to come, and, consequently, to be adapted to the various crises of human affairs." *M'Culloch v. Maryland*, 17 U.S. 316, 415 (1819). Though the "Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated," its meaning is "fixed according to the understandings of those who ratified it." *New York State Rifle & Pistol Association, Inc. 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: Yes.

a. **Was it correctly decided?**

Response: As a judicial nominee, I am precluded by Canon 3(A)(6) of the Code of Conduct for United States Judges from commenting on whether I believe a particular Supreme Court case was correctly decided. If confirmed, I would faithfully apply all binding precedent – including *Dobbs v. Jackson Women's Health*.

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

Response: Yes.

a. **Was it correctly decided?**

Response: As a judicial nominee, I am precluded by Canon 3(A)(6) of the Code of Conduct for United States Judges from commenting on whether I believe a particular Supreme Court case was correctly decided. If confirmed, I would faithfully apply all binding precedent – including *Cooper v. Aaron*.

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

Response: Yes.

a. **Was it correctly decided?**

Response: As a judicial nominee, I am precluded by Canon 3(A)(6) of the Code of Conduct for United States Judges from commenting on whether I believe a particular Supreme Court case was correctly decided. If confirmed, I would faithfully apply all binding precedent – including *New York Rifle & Pistol Association v. Bruen*.

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

Response: Yes.

a. **Was it correctly decided?**

Response: Yes. As a judicial nominee, I am generally precluded by Canon 3(A)(6) of the Code of Conduct for United States Judges from commenting on whether I believe a particular Supreme Court case was correctly decided. However, the legal issues presented in *Brown v. Board of Education* are so foundational and firmly part of our constitutional framework that they are unlikely to be the subject of future litigation. Therefore, like other judicial nominees who have preceded me, I am comfortable expressing my view that *Brown* was correctly decided.

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

Response: Yes.

a. **Was it correctly decided?**

Response: As a judicial nominee, I am precluded by Canon 3(A)(6) of the Code of Conduct for United States Judges from commenting on whether I believe a particular Supreme Court case was correctly decided. If confirmed, I would faithfully apply all binding precedent – including *Students for Fair Admissions v. Harvard*.

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

Response: Yes.

a. **Was it correctly decided?**

Response: As a judicial nominee, I am precluded by Canon 3(A)(6) of the Code of Conduct for United States Judges from commenting on whether I believe a particular Supreme Court case was correctly decided. If confirmed, I would faithfully apply all binding precedent – including *Gibbons v. Ogden*.

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

Response: Pursuant to 18 U.S.C. § 3142(e), offenses triggering a rebuttable presumption of pretrial detention include: (1) an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act; (2) an offense under 18 U.S.C. §§ 924(c), 956(a) or 2332(b); (3) an offense under 18 U.S.C. § 2332(b)(g)(5)(B) for which a maximum term of imprisonment of 10 years or more is presdribed; (4) an offense under chapter 77 of Title 18 for which a maximum term of imprisonment of 20 years or more is prescribed; and (5) an offense involving a minor victim under 18 U.S.C. §§ 1201, 1591, 2241, 2242, 2244(a)(1), 2245, 2251, 2251A,

2252(a)(1), 2252(a)(2), 2252(a)(3), 2252A(a)(1), 2252A(a)(2), 2252A(a)(3), 2252A(a)(4), 2260, 2421, 2422, 2423, and 2425.

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

Response: As a former federal prosecutor, I am aware that the purpose of pretrial detention is to prevent flight and danger to the community. One policy rationale for the presumption of detention would be that the above-referenced statutes – which include things like terrorism offenses, gun offenses, and offenses with child victims – carry a greater risk of either flight or danger to the community (or both).

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. Some examples of limits on the government's ability to impose upon or require certain actions from private institutions can be found in the First Amendment, Religious Freedom Restoration Act, and Title VII of the Civil Rights Act. *See, e.g,. Groff v. DeJoy*, 600 U.S. 447 (2023) (applying Title VII of the Civil Rights Act); *Tandon v. Newsom*, 593 U.S. 61 (2021) (applying the Free Exercise Clause of the First Amendment); *Burwell v. Hobby Lobby*, 573 U.S. 682, 720-23 (2014) (applying the Religious Freedom Restoration Act).

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

Response: Discrimination based upon religion is prohibited by the Civil Rights Act of 1964. Laws that burden the Free Exercise of religion must either be neutral and generally applicable or withstand strict scrutiny review. *See, e.g., Kennedy v. Bremerton School District*, 597 U.S. 507, 525 (2022). To survive strict scrutiny, the law must be justified by a compelling government interest and narrowly tailored to meet that interest. *See id.*

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 a church and synagogues were entitled to injunctive relief against the Governor of New York's Executive Order imposing occupancy restrictions on houses of worship during the COVID-19 pandemic. Specifically, the Court found

that the religious institutions were likely to succeed on the merits because the Executive Order was not neutral in that it "single[d] out houses of worship for especially harsh treatment." *Id.* at 17. Moreover, the harm was irreparable because "the loss of First Amendment Freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Id.* at 19. Finally, the state did not show that granting the injunction would harm the public. *Id.* at 20.

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 the State of California's COVID restrictions on at-home religious worshippers likely violated the Free Exercise Clause of the First Amendment, such that an injunction was warranted. Specifically, the restrictions were subject to a strict scrutiny analysis because they treated religious activities less favorably than comparable secular activities. *Id.* at 62. They failed strict scrutiny analysis because "where the government permits other activities to proceed with precautions, it must show that the religious exercise at issue is more dangerous than those activities even when the same precautions are applied," and the state did not do so. *Id.* at 63.

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: In *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 584 U.S. 617 (2018), the Supreme Court held that the Colorado Civil Rights Commission violated the Free Exercise Clause in its enforcement of the Colorado Anti-Discrimination Act against a baker who refused to design a cake for the wedding of a same-sex couple because of his religious opposition to their marriage. Specifically, the Court found that "the Civil Rights Commission's treatment of [the] case has some elements of a clear and impermissible hostility toward the sincere religious beliefs that motivated [the baker's] objection," and as a result the law had not been applied in a religiously neutral manner. *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. *See e.g., Burwell v. Hobby Lobby Stores, Inc.,* 573 U.S. 682, 724 (2014) ("it is not for us to say that their religious beliefs are mistaken or insubstantial…our narrow function…in this context is to determine whether the line drawn reflects an honest conviction") (internal quotations omitted); *Employment Division, Department of Human Resources of Oregon v. Smith,* 494 U.S. 872, 887 (1990) ("Repeatedly and in

many different contexts, we have warned that courts must not presume to determine the place of a particular belief in a religion or the plausibility of a religious claim").

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

Response: Yes, so long as those interpretations are sincerely held. *See e.g., Burwell v. Hobby Lobby Stores, Inc.,* 573 U.S. 682, 724 (2014) ("it is not for us to say that their religious beliefs are mistaken or insubstantial…our narrow function…in this context is to determine whether the line drawn reflects an honest conviction") (internal quotations omitted); *Employment Division, Department of Human Resources of Oregon v. Smith,* 494 U.S. 872, 887 (1990) ("Repeatedly and in many different contexts, we have warned that courts must not presume to determine the place of a particular belief in a religion or the plausibility of a religious claim").

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

Response: Yes, so long as those interpretations are sincerely held. *See e.g., Burwell v. Hobby Lobby Stores, Inc.,* 573 U.S. 682, 724 (2014) ("it is not for us to say that their religious beliefs are mistaken or insubstantial…our narrow function…in this context is to determine whether the line drawn reflects an honest conviction") (internal quotations omitted); *Employment Division, Department of Human Resources of Oregon v. Smith,* 494 U.S. 872, 887 (1990) ("Repeatedly and in many different contexts, we have warned that courts must not presume to determine the place of a particular belief in a religion or the plausibility of a religious claim").

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

Response: That is not my understanding of the Catholic Church's position. That said, consistent with my above answers, my personal understanding of the Catholic Church's position on abortion would be irrelevant to my work were I to be confirmed as a District Judge.

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*, 591 U.S. 732 (2020), the Supreme Court held that the ministerial exception, grounded in the First Amendment's Religion Clauses, barred a Catholic elementary school teacher's employment discrimination claims. Describing the ministerial exception, the Court stated that "a church's independence on matters of 'faith and doctrine' requires the

authority to select, supervise, and if necessary, remove a minister without interference by secular authorities." *Id.* at 747. "When a school with a religious mission entrusts a teacher with the responsibility of educating and forming students in the faith, judicial intervention into disputes between the school and the teacher threatens the school's independence in a way that the First Amendment does not allow." *Id.* at 762.

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), the Supreme Court held that Philadelphia's refusal to contract with Catholic Social Services (CSS) for the provision of foster care services unless CSS agreed to certify same-sex couples as foster parents violated the First Amendment. The Court found that the city's rule requiring foster placement regardless of sexual orientation was not generally applicable because it provided for individual exemptions at the sole discretion of the city. *Id.* at 535. Given the lack of general applicability, the city had to survive strict scrutiny analysis. The Court found that it had not, because its asserted interest of maximizing the number of foster families was not served by eliminating CSS, its asserted interest of minimizing liability was speculative, and its interest of equal treatment of prospective foster parents, while "weighty," "cannot justify denying CSS an exception for its religious exercise." *Id.* at 542.

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), the Supreme Court held that Maine's "nonsectarian" requirement for its tuition assistance program for private secondary schools violated the Free Exercise Clause because it conditioned the receipt of government benefits solely on a school's religious character. "Regardless of how the benefit and restriction are described, the program operates to identify and exclude otherwise eligible schools on the basis of their religious exercise," which is not permitted under the First Amendment. *Id.* at 789.

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), the Supreme Court held that a school district violated its employee's rights under the Free Exercise Clause and Free Speech Clause by suspending him after he prayed quietly at midfield after a football game, at a time when others were allowed to engage in non-religious private speech. The District conceded that its policies were neither neutral nor generally

applicable, and the Court found that the policies did not satisfy strict scrutiny analysis, rejecting the school district's claim that the Establishment Clause required it to prohibit the prayer.

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), the Supreme Court vacated a judgment of the Court of Appeals of Minnesota and remanded the case for further consideration. At issue was the Minnesota court's interpretation and application of the Religious Land Use and Institutionalized Persons Act. Justice Gorsuch concurred, urging the lower court to apply strict scrutiny, and specifically "scrutinize the asserted harm of granting specific exemptions to particular claimants," rather than asking whether the government interest is generally compelling. *Id.* at 2432. Justice Gorsuch further urged that the lower court determine whether the state's rules "are narrowly tailored to advance a compelling state interest with respect to the specific persons it seeks to regulate…if the government can achieve its interests in a manner that does not burden religion, *it must do so*." *Id.* at 2433 (emphasis in original).

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: The constitutional avoidance doctrine is a canon of statutory construction that helps courts choose between competing plausible interpretations of a statutory text "resting on the reasonable presumption that Congress did not intend the alternative which raises serious constitutional doubts." *Clark v. Martinez*, 543 U.S. 371, 381 (2005). In the event that any case were brought to me where parties were arguing about whether a statute should be read narrowly to avoid a constitutional question or more broadly, I would follow the relevant precedent of the Supreme Court and Seventh Circuit.

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: Any personal views I might hold as to the appropriateness of any elected official's actions would be irrelevant were I to be confirmed as a District Judge, and the Code of Conduct for United States Judges precludes me from sharing any views on political appointments. As to whether such an appointment would be constitutional, if such a matter were presented to me I would carefully evaluate the factual record before me as well as the binding Supreme Court and Seventh Circuit precedent before making any determination.

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

Response: Under certain statutory schemes, claims of illegal discrimination can be supported either by a showing of purposeful discrimination or disparate impact, which relies on "the consequences of actions and not…the mindset of actors." *See Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, Inc.*, 576 U.S. 519, 533 (2015) (discussing Title VII of the Civil Rights Act and the Fair Housing Act). If I were confirmed as a District Judge and a case were brought to me that raised claims of illegal racial discrimination as evidenced by racially disparate impact, I would apply the binding precedent of the Supreme Court and Seventh Circuit in making any determination.

34. **Do you believe that Congress should increase, or decrease, the number of justices**

on the U.S. Supreme Court? Please explain.

Response: The appropriate size of the U.S. Supreme Court is a question reserved to the Legislative and Executive branches. If confirmed, I would faithfully apply Supreme Court precedent irrespective of the size of the Supreme Court.

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 Second Amendment protects an individual's right to keep and bear arms in one's home and in public for self defense. *See District of Columbia v. Heller*, 554 U.S. 570 (2008); *McDonald v. City of Chicago*, 561 U.S. 742 (2010); *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: The Supreme Court has held that "when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's unqualified command." *New York State Rifle & Pistol Association, Inc., v. Bruen*, 597 U.S. 1, 17 (2022) (internal citation omitted). The Supreme Court further expanded upon this test in *United States v. Rahimi*, 144 S. Ct. 1889, 1898 (2024), stating that a court "must ascertain whether the new law is 'relevantly similar' to laws that our tradition is understood to permit, 'applying faithfully the balance struck by the founding generation to modern circumstances.'"

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

Response: Yes. *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. *See McDonald v. City of Chicago*, 561 U.S. 742, 780 (2010) (declining to treat the Second Amendment as a "second-class right").

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

Response: No. *See McDonald v. City of Chicago*, 561 U.S. 742, 780 (2010) (declining to treat the Second Amendment as a "second-class right").

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

Response: The Supreme Court has held that "the Executive Branch possesses authority to decide how to prioritize and how aggressively to pursue legal actions against defendants who violate the law." *United States v. Texas*, 599 U.S. 670, 678-79 (2023) (collecting cases describing in varying language the concept of prosecutorial discretion). The Code of Conduct for United States Judges prohibits me from commenting as to whether I personally consider a legal act of the Executive Branch to be appropriate.

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

Response: Prosecutorial discretion is the power of the Executive Branch "to decide how to prioritize and how aggressively to pursue legal actions against defendants who violate the law." *United States v. Texas*, 599 U.S. 670, 678-79 (2023). The Administrative Procedure Act, which governs administrative rule creation and changes, specifically excludes "agency action…committed to agency discretion by law," 5 U.S.C. § 701(a)(2), which has been interpreted to include agency refusals to institute investigative or enforcement proceedings. *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).

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

Response: No. Title 18 United States Code sections 3591 through 3599 set forth the circumstances and procedures under which a sentence of death may be imposed. The President does not have the authority to overturn statutes duly enacted by Congress.

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 vacated a stay pending appeal of a court order enjoining the CDC from imposing a nationwide moratorium on evictions during the COVID-19 pandemic, given that Congress did not specifically authorize the action. The Supreme Court stated that Congress is expected "to speak clearly when authorizing an agency to exercise powers of vast economic and political significance," and therefore such action will not be inferred from an ambiguous statute. *Id.* at 764.

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: Based upon my 14 years of experience as both a federal and state prosecutor, I know that it is law enforcement's role to investigate crimes and a prosecutor's role to carefully review the evidence gathered during the investigation to determine whether or not the evidence supports the filing of charges.

Questions from Senator Thom Tillis
For April M. Perry, nominated to serve as U.S. District Judge for the Northern District of Illinois

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

   Response: A judge's personal views and background should play no role in a judge's consideration of the facts or law relevant to a case or the judge's conclusions in that case.

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

   Response: I believe impartiality is an expectation and it is vital to ensuring the fairness and equal treatment under the law that our justice system demands. Impartiality is also required by Canon 2 of the Code of Conduct for United States Judges.

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

   Response: Judicial activism means different things to different people. I define judicial activism as deciding a case based upon the personal beliefs and preferences of the judge rather than by applying the law and precedent as written. I do not consider this to be appropriate.

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

   Response: No.

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

   Response: Faithfully interpreting the law results in consistency, predictability, and uniformity in our justice system, which I believe to be a desirable outcome. Although faithfully interpreting the law may result in outcomes that one personally would not have chosen, that is the nature of our legal system.

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

   Response: If I were to be confirmed, I would apply all Supreme Court and Seventh Circuit precedent faithfully, including *District of Columbia v. Heller*, 554 U.S. 570 (2008), *McDonald v. City of Chicago*, 561 U.S. 742 (2010), and *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022).

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

Response: Should I be confirmed, I would follow all Supreme Court and Seventh Circuit precedent faithfully. Generally speaking, qualified immunity "protects government officials from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Pearson v. Callahan*, 555 U.S. 223, 231 (2009). There is a two-step inquiry for resolving qualified immunity claims: "First, a court must decide whether the facts a plaintiff has alleged make out a violation of a constitutional right. Second, if the plaintiff has satisfied this first step, the court must decide whether the right at issue was clearly established at the time of defendant's alleged misconduct. Qualified immunity is applicable unless the official's conduct violated a clearly established constitutional right." *Id.* at 232 (internal quotations and citations omitted).

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

Response: As a former prosecutor, I am extremely familiar with the vital role that law enforcement officers play in our justice system and in ensuring public safety. Moreover, as a hearing officer for the Chicago Police Board, I heard numerous officers testify about highly emotional, stressful, dangerous, and difficult situations that they encountered each day, many of which required a series of judgments to be made in quick succession without time for reflection or communication. As a judicial nominee, I am precluded from giving my opinion about qualified immunity policy implications or the quality of jurisprudence by Canon 3(A)(6) of the Code of Conduct for United States Judges. If confirmed, I would apply all Supreme Court and Seventh Circuit precedent faithfully.

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

Response: As a former prosecutor, I am extremely familiar with the vital role that law enforcement officers play in our justice system and in ensuring public safety. Moreover, as a hearing officer for the Chicago Police Board, I heard numerous officers testify about highly emotional, stressful, dangerous, and difficult situations that they encountered each day, many of which required a series of judgments to be made in quick succession without time for reflection or communication. That said, as a judicial nominee I am precluded from giving my opinion about the proper scope of qualified immunity protections by Canon 3(A)(6) of the Code of Conduct for United States Judges. If confirmed, I would apply all Supreme Court and Seventh Circuit precedent faithfully.

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

Response: Having served as General Counsel to a technology startup that applied for and received several patents and trademarks during my tenure, I know that there are innumerable legislative, business, and financial factors that affect a company's ability to obtain intellectual property protection and enforce its IP rights. Determinations regarding the scope of IP protection and how and when to enforce IP rights are best left to IP rights holders and the Executive and Legislative branches. If I were confirmed as a judge, I would be sure to apply the law in a fair and consistent manner, applying faithfully all Supreme Court and Seventh Circuit precedent.

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

Response: As a judicial nominee, I am precluded from expressing an opinion on the appropriateness of judicial district rules. From a philosophical standpoint, I believe that "judge shopping" should be unnecessary because all judges should uphold the rule of law in a consistent and uniform manner.

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

Response: As a judicial nominee, I am precluded from giving my opinion about the quality of Supreme Court jurisprudence by Canon 3(A)(6) of the Code of Conduct for United States Judges. If confirmed, I would do my best to interpret and faithfully apply all Supreme Court and Seventh Circuit precedent.