Senator Dick Durbin
Ranking Member, Senate Judiciary Committee
Written Questions for Whitney Hermandorfer
Nominee to be U.S. Circuit Judge for the Sixth Circuit
June 15, 2025

1. At your hearing, you suggested that the decision to file an amicus brief in *Trump v. CASA, Inc.* was made by the Attorney General of Tennessee. You are the Director of Strategic Litigation in the Office of the Tennessee Attorney General & Reporter, and your signature appeared on the amicus brief submitted to the Supreme Court in March 2025.

a. What role did you have in deciding to file an amicus brief in *Trump v. CASA, Inc.*?

Response: The decision whether to file or sign any amicus brief is made by the Attorney General. I advised the Attorney General regarding the arguments that were being made in the litigation as he considered whether to file an amicus brief.

b. What role did you have in drafting Tennessee's amicus brief in *Trump v. CASA, Inc.*?

Response: I participated in drafting the amicus brief.

c. Do you believe President Trump's executive order on birthright citizenship is constitutional?

Response: Because this question asks about matters that are the subject of ongoing litigation, it would be improper for me as a judicial nominee to opine on it.

In the amicus brief you submitted in *Trump v. CASA, Inc.*, you argued against nationwide injunctions, writing that "[the Supreme] Court should reject plaintiffs' invitation to employ an across-the-board override of an Executive policy throughout the country" and that "[the Supreme] Court should clarify that any injunctive relief must be limited to the parties." However, you sought a nationwide preliminary injunction in several cases you litigated against the Biden Administration, including *Tennessee v. Cardona*.

d. Why do you support the use of nationwide injunctions to enjoin policies of the Biden Administration but not the Trump Administration?

Response: In the cited cases, I was serving as an advocate for a client and not expressing personal "support" for any case outcome. The brief in *Trump v. CASA, Inc.* moreover flags that the arguments regarding the authorization of equitable relief are potentially "distinct" in the context of a challenge to an agency promulgation under the Administrative Procedure Act (APA). *See* Br. 21; *see also, e.g.*, *Corner Post, Inc. v. Board of Governors of Fed. Reserve Sys.*, 603 U.S. 799, 838 (2024)

(Kavanaugh, J., concurring). The preliminary injunctive relief we received in *Tennessee v. Cardona* was plaintiff specific, not nationwide; ultimately, we received vacatur under the APA. In the non-APA context, including in § 1983, our Office has long filed briefs opposing overly broad, in personam equitable relief that extends to non-parties.

2. In your Questionnaire, you wrote that your Strategic Litigation Unit's role involves "initiating affirmative litigation against the federal government and corporate actors." You have repeatedly chosen to litigate politically charged issues, including challenging anti-discrimination policies of the Biden Administration and defending Tennessee laws that ban health care for transgender youth and restrict reproductive rights.

a. Considering your record in the Tennessee Attorney General's office, why should any transgender person have confidence that you will treat them fairly if you are confirmed to serve as a circuit judge?

Response: In the cited cases, I was serving as an advocate for a client, the State of Tennessee, whose duly enacted legislative policies were directly preempted by federal regulation or lawsuits against which the Attorney General authorized litigation. I stand by the legal arguments our Office has advanced, which have often prevailed—including in the Sixth Circuit. As a judge, I would be called on not to advocate for any particular cause or party but instead to interpret and apply the law neutrally. I understand the distinct roles of advocates and judges and am proud of the support I've received from attorneys of a variety of political and ideological leanings, as well as backgrounds, who have spoken to my reputation for fairness, analytical rigor, and affording my colleagues and opposing counsel respect.

b. If you are confirmed, will you commit to using the preferred names and pronouns of any transgender attorney, litigant, or party who may appear before you?

Response: I would treat and refer to all who may appear before me with dignity, respect, and fairness, and I will require that others in the courtroom treat and refer to case participants and others parties to the judicial process with dignity and respect as well..

3. At your hearing, you told Senator Coons that you "served as chief counsel in many final judgment cases in trial court," but you also stated that you had never served as sole or chief counsel in any case tried to a jury verdict, or in any bench trial. Additionally, in your Questionnaire, you wrote that you "have not served as sole or chief counsel in any case tried to verdict or judgment."

a. Have you ever served as sole counsel in any case tried to verdict, judgment, or final decision?

Response: No, on the understanding that "tried" refers to a case in which the matter is presented live in court, with witnesses, for adjudication by a jury or judge sitting as factfinder.

b. Have you ever served as chief counsel in any case tried to verdict, judgment, or final decision?

Response: No, on the understanding that "tried" refers to a case in which the matter is presented live in court, with witnesses, for adjudication by a jury or judge sitting as factfinder. I have participated in two jury trials, one bench trial, and one panel arbitration in various legal capacities, but not as counsel.

c. What did you mean when you told Senator Coons that you "served as chief counsel in many final judgment cases in trial court"?

Response: If I had been permitted, I would have explained that I have practiced extensively in federal trial court, serving as party counsel in over twenty matters. The majority of these cases involve challenges to agency action under the APA. As the letter to the Committee from the administrative-law practitioners explains, such matters are typically not "tried" in court, but instead are resolved by the district judge on summary judgment based on a paper evidentiary record, the agency's administrative record, and appellate-style legal briefs. Those are the category of cases to which I was referring to Senator Coons. I have served as chief or sole counsel for Tennessee and chief counsel for multi-State coalitions in several such cases that have proceeded to final judgment in federal district court.

4. At your hearing, you told Senator Schiff that you have met Leonard Leo "a few times."

a. How many times have you met Leonard Leo?

Response: To the best of my recollection, two or three times.

b. Have you ever discussed judicial nominations or federal judgeships with Leonard Leo? If yes, please describe these conversations.

Response: No.

c. Have you discussed your prospective nomination with Mr. Leo before you were nominated or since you were nominated? If yes, please describe these conversations.

Response: No.

5. In your Questionnaire, you listed several events sponsored by the Federalist Society in which you participated.

a. Was any of the out-of-state travel for events listed on your Senate Judiciary Questionnaire done at state taxpayer expense?

Response: To the best of my knowledge, I did not seek state reimbursement of the travel listed for the Federalist Society events on my Questionnaire. I recall seeking marginal reimbursement for mileage expenses associated with the June 2024 event in West Virginia, which I attended at the direction of the Attorney General.

b. If yes, what was the justification for Tennessee taxpayers funding your out-of-state travel?

Response: I attended at the direction of the Attorney General in furtherance of my role as Director of Strategic Litigation.

c. If yes, did you receive any form of pre-travel authorization or file any post-travel expense reports? Did you comply with all relevant state laws addressing travel by public officials at state taxpayer expense?

Response: To the best of my knowledge, I followed all applicable procedures and regulations.

6. Did President Trump lose the 2020 election?

Response: President Biden was certified as the winner of the 2020 presidential election and served as the 46th President of the United States. To the extent this question seeks to elicit an answer that could be taken as opining on the broader political or policy debate regarding the conduct of the 2020 presidential election or on statements by any political figure, my response, consistent with the position of prior judicial nominees when asked questions regarding the 2020 election, is that it would be improper to offer any such comment as a judicial nominee. *See* Code of Conduct of U.S. Judges, Canons 3(A)(6), 5.

7. Where were you on January 6, 2021?

Response: I was working from my home in Washington, DC.

8. Do you denounce the January 6 insurrection?

Response: The characterization of the conduct of persons located at the Capitol on January 6, 2021, is a matter of significant political debate. In addition, I am aware that the legal import of pardons issued to those prosecuted for involvement in events at the Capitol on January 6, 2021 is a matter subject to ongoing litigation and that could arise in cases were I confirmed as a judge; so too, if I am confirmed, persons present at the Capitol on January 6, 2021 could come before me as parties to future cases. As a judicial nominee it would thus be inappropriate to provide comments that could implicate issues or parties that might come before me.

9. Do you believe that January 6 rioters who were convicted of violent assaults on police officers should have been given full and unconditional pardons?

Response: See preceding answer.

10. The Justice Department is currently defending the Trump Administration in a number of lawsuits challenging executive actions taken by the Administration. Federal judges—both Republican and Democratic appointees—have enjoined some of these actions, holding that they are illegal or unconstitutional. Alarmingly, President Trump, his allies, and even some nominees before the Senate Judiciary Committee have responded by questioning whether the executive branch must follow court orders.

a. What options do litigants—including the executive branch—have if they disagree with a court order?

Response: Generally, if there is a lower-court order that binds the Executive Branch or an executive official or agency, the normal course is for the party to follow the order and seek appellate review if the party disagrees with the outcome; if the Supreme Court issues an order upon the conclusion of appellate review, that order is to be followed. If the order relates to the interpretation of a statute with which a party might disagree, the party also might push for legislative amendment of the statute.

b. Do you believe a litigant can ever lawfully defy an order from a lower federal court? If yes, in what circumstances?

Response: I have not had occasion to study these questions exhaustively; my general understanding of the relevant legal considerations is as follows. If there is a lower-court order that binds the Executive Branch or an executive official or agency, the normal course is for the party to follow the order and seek appellate review if the party disagrees with the outcome; if the Supreme Court issues an order upon the conclusion of appellate review, that order is to be followed. With respect to potential exceptions to that rule, I am aware of scholarly work that has posited scenarios in which parties, including the Executive Branch or one of its officers, departments, or agencies, might permissibly disregard a court order. *See generally, e.g.*, William Baude, *The Judgment Power*, 96 Geo. L.J. 1807 (2008) (lack of jurisdiction); Gary Lawson & Christopher D. Moore, *The Executive Power of Constitutional Interpretation*, 81 Iowa L. Rev. 1267, 1326 (1996) (constitutional error "so clear that it is not open to rational question"); *see also* 17 Corpus Juris Secundum Contempt §§ 56-65 (discussing contempt defenses). I am also aware of the legal distinction that parties and jurists have drawn between a court's binding "judgment[]" and its "statements in opinions." *Camreta v. Greene*, 563 U.S. 692, 704 (2011); *see* Abraham Lincoln, First Inaugural Address (Mar. 4, 1861) (discussing *Dred Scott v. Sanford*). And I am generally aware that, there are certain interlocutory orders might be immediately appealable only via

the avenue of a contempt finding. *See, e.g.*, *Mohawk Industries, Inc. v. Carpenter*, 558 U.S. 100, 111 (2009) ("Another long-recognized option is for a party to defy a disclosure order and incur court-imposed sanctions."). In *U.S. ex rel. Pogue v. Diabetes Treatment Centers of Am., Inc.*, the Sixth Circuit explained that the "general rule" is that a non-party "seeking to appeal a discovery order must first disobey the order and suffer a contempt citation." 444 F.3d 462, 471 (6th Cir. 2006) (citing *Alexander v. United States*, 201 U.S. 117, 121-22 (1906)). Because a case involving these issues could come before me if I were confirmed as a judge, it would be inappropriate to provide an answer that categorically pre-determines the validity of potential legal arguments for or against adhering to court orders. If any such issues came before me, I would commit to resolving them through the judicial process through careful consideration and application of the parties' arguments and the governing law and precedents.

c. Under the separation of powers, which branch of the federal government is responsible for determining whether a federal court order is lawful?

Response: Article III of the U.S. Constitution states that "[t]he judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish," and that this power "shall extend to all Cases, in Law and Equity, arising under the Constitution" or other federal laws, among other "Cases" and "Controversies." Otherwise, please see my answers to Questions 10.a.-b.

11. District judges have occasionally issued non-party injunctions, which may include "nationwide injunctions" and "universal injunctions."

a. Are non-party injunctions constitutional?

Response: This question relates to matters that are the subject of ongoing litigation and directly before the Supreme Court in *Trump v. CASA, Inc.* at present, so it would be improper for me as a judicial nominee to opine further on this issue.

b. Are non-party injunctions a legitimate exercise of judicial power?

Response: Please see my answer to Question 11.a.

c. Is it ever appropriate for a district judge to issue a non-party injunction? If so, under what circumstances is it appropriate?

Response: Please see my answer to Question 11.a

d. As a litigator, have you ever sought a non-party injunction as a form of relief? If so, please list each matter in which you have sought such relief.

Response: As an attorney representing private clients and the State of Tennessee, I have sought injunctive relief against the implementation of federal agency action as well as vacatur and stays under the APA. Examples of such cases are listed on my Senate Judiciary Questionnaire (listing, e.g., *Tennessee v. Cardona*, 2:24-cv-072 (E.D. Ky.); *Tennessee v. Becerra*, 1:24-cv-161 (S.D. Miss.); *Tennessee v. EEOC*, 2:24-cv-84 (E.D. Ark.); and *American Home Furnishings Alliance v. CPSC* (5th Cir. No. 23-477)).

12. At any point during your selection process, did you have any discussions with anyone—including individuals at the White House, the Justice Department, or any outside groups—about loyalty to President Trump? If so, please provide details.

Response: No.

13. Does the U.S. Constitution permit a president to serve three terms?

Response: Section 1 of the 22nd Amendment to the U.S. Constitution directs that "[n]o person shall be elected to the office of the President more than twice."

14. When, if ever, may a lower court depart from Supreme Court precedent?

Response: It is never appropriate for lower courts to depart from directly controlling Supreme Court precedent. *See Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477, 484 (1989) ("If a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions.").

15. When, in your opinion, would it be appropriate for a circuit court to overturn its own precedent?

Response: I would follow the practices and precedents of the Sixth Circuit with respect to overturning circuit precedent. In the Sixth Circuit, "a three-judge panel may not overturn a prior decision unless a Supreme Court decision mandates modification of [circuit] precedent." *RLR Invs., LLC v. City of Pigeon Forge, Tennessee*, 4 F.4th 380, 390 (6th Cir. 2021). A circuit may otherwise consider overruling its own precedent only when sitting en banc. To determine when the en banc court should overrule a published panel decision, Federal Rule of Appellate Procedure 35(b)(1) and 6th Cir. I.O.P. 35(a) offer guideposts, including, for example, whether the decision has created a circuit split or whether the decision conflicts with other decisions from the Sixth Circuit or from the Supreme Court.

16. When, in your opinion, would it be appropriate for the Supreme Court to overrule its own precedent?

Response: In determining whether to overrule precedent, the Supreme Court applies the stare decisis factors set out in *Dobbs v. Jackon Women's Health Organization*, 597 U.S. 215, 268-90 (2022).

17. Please answer yes or no as to whether the following cases were correctly decided by the Supreme Court:

Response: As Justice Kagan explained and many other judicial nominees across administrations have reiterated, it is generally not appropriate for a judicial nominee to "grade" or give a "thumbs-up or thumbs-down" to particular precedents of the Supreme Court. Were I confirmed as a judge, all of the Supreme Court's pronouncements would be binding on me. Under the Code of Conduct for United States Judges, I have a duty as a judicial nominee to refrain from commenting on the merits or demerits of the Supreme Court's binding precedents, because doing so creates the impression that I would have difficulty applying binding law to adjudicate parties' cases.

a. *Brown v. Board of Education*

Response: *Brown v. Board of Education*, 347 U.S. 483 (1954), is a landmark ruling that promotes racial equality and rejected the manifestly unjust and incorrect separate-but-equal rule of *Plessy v. Ferguson*. Consistent with the position of prior judicial nominees, I consider *Brown* to be one of the limited exceptions to the general principle that a judicial nominee should not comment on the Supreme Court's precedents. I agree with prior nominees that the underlying premise of the *Brown* decision—i.e., that "separate but equal is inherently unequal"—is beyond dispute, and that judges can express their agreement with that principle without calling into question their ability to apply the law faithfully to cases raising similar issues. Therefore, just as other nominees for judicial office have done, I can confirm that *Brown* was rightly decided consistent with the Code of Conduct.

b. *Plyler v. Doe*

Response: *Plyler* is a binding precedent of the Supreme Court, and if confirmed, I would faithfully apply it. Otherwise, please see my answer to 17, preface.

c. *Loving v. Virginia*

Response: In *Loving v. Virginia*, 388 U.S. 1 (1967), the Supreme Court invalidated a state law prohibiting interracial couples from marrying. Like prior nominees, I consider *Loving*, like *Brown*, to be one of the limited exceptions to the general principle that a judicial nominee should not comment on the Supreme Court's precedents. In my view, *Loving* correctly reaffirmed *Browns*'s rejection of the "notion that the mere 'equal application' of a statute containing racial classifications" comports with the Fourteenth Amendment, *Loving*, 388 U.S. at 8. Consistent with the approach of prior nominees, I thus can articulate *Loving*'s correctness consistent with my duties under the Code of Conduct.

d. *Griswold v. Connecticut*

Response: *Griswold* is a binding precedent of the Supreme Court, and if confirmed, I would faithfully apply it. Otherwise, please see my answer to 17, preface.

e. *Trump v. United States*

Response: *Trump* is a binding precedent of the Supreme Court, and if confirmed, I would faithfully apply it. Otherwise, please see my answer to 17, preface.

f. *Dobbs v. Jackson Women's Health Organization*

Response: *Dobbs* is a binding precedent of the Supreme Court, and if confirmed, I would faithfully apply it. Otherwise, please see my answer to 17, preface.

g. *New York State Rifle & Pistol Association, Inc. v. Bruen*

Response: *Bruen* is a binding precedent of the Supreme Court, and if confirmed, I would faithfully apply it. Otherwise, please see my answer to 17, preface.

h. *Obergefell v. Hodges*

Response: *Obergefell* is a binding precedent of the Supreme Court, and if confirmed, I would faithfully apply it. Otherwise, please see my answer to 17, preface.

i. *Bostock v. Clayton County*

Response: *Bostock* is a binding precedent of the Supreme Court, and if confirmed, I would faithfully apply it. Otherwise, please see my answer to 17, preface.

j. *Masterpiece Cakeshop v. Colorado*

Response: *Masterpiece* is a binding precedent of the Supreme Court, and if confirmed, I would faithfully apply it. Otherwise, please see my answer to 17, preface.

k. *303 Creative LLC v. Elenis*

Response: *303 Creative* is a binding precedent of the Supreme Court, and if confirmed, I would faithfully apply it. Otherwise, please see my answer to 17, preface.

l. *United States v. Rahimi*

Response: *Rahimi* is a binding precedent of the Supreme Court, and if confirmed, I would faithfully apply it. Otherwise, please see my answer to 17, preface.

m. *Loper Bright Enterprises v. Raimondo*

Response: *Loper Bright* is a binding precedent of the Supreme Court, and if confirmed, I would faithfully apply it. Otherwise, please see my answer to 17, preface.

18. With respect to constitutional interpretation, do you believe judges should rely on the "original meaning" of the Constitution?

Response: As a lower court judge, my principal task would be to faithfully apply all applicable precedent of the Supreme Court and the Sixth Circuit, without regard to whether that binding precedent did or did not comport with the original public meaning of that provision. In interpreting the Constitution, I would employ methodologies consistent with the methods of interpretation that the Supreme Court and the Sixth Circuit employ when they undertake to interpret constitutional provisions. Both courts have routinely interpreted various constitutional provisions by attempting to discern the original meaning of the words used as understood by the public at the time of the Founding. *See, e.g.*, *District of Columbia v. Heller*, 554 U.S. 570 (2008); *Crawford v. Washington*, 541 U.S. 36 (2004); *Wilson v. Arkansas*, 514 U.S. 927 (1995).

19. How do you decide when the Constitution's "original meaning" should be controlling?

Response: Please see my answer to Question 18.

20. Does the "original meaning" of the Constitution support a constitutional right to same-sex marriage?

Response: In *Obergefell v. Hodges*, 576 U.S. 644 (2015), the Supreme Court held that the Fourteenth Amendment requires a state to license marriages between two people of the same sex on the same terms and conditions as marriages between two people of the opposite sex. As a lower court judge, I would be bound to apply all Supreme Court precedents without regard to critiques about their consistency with the concept of original public meaning. If confirmed, I would faithfully follow *Obergefell* and all other precedents of the Supreme Court.

21. Does the "original meaning" of the Constitution support the constitutional right to marry persons of a different race?

Response: In *Loving v. Virginia*, 388 U.S. 1 (1967), the Supreme Court invalidated a state law prohibiting interracial couples from marrying. As discussed in my answers to Question 17.a and .c, and consistent with the answers of prior nominees, I can answer consistent with my duties under the Code of Conduct that *Loving* correctly reaffirmed *Browns*'s rejection of the "notion that the mere 'equal application' of a statute containing racial classifications" comports with the Fourteenth Amendment, *Loving*, 388 U.S. at 8.

22. What is your understanding of the Equal Protection and Due Process clauses of the Fourteenth Amendment?

At a high level, based on Supreme Court precedent, I understand the Equal Protection Clause of the Fourteenth Amendment to limit the government's ability to classify persons (i) in a way that lacks a rational basis, *see, e.g.*, *Armour v. City of Indianapolis, Ind.*, 566 U.S. 673 (2012), or (ii) in a way that infringes fundamental rights or acts on the basis of quasi-suspect or suspect characteristics, *see, e.g.*, *id.*; *Students for Fair Admission, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181 (2023). The Due Process Clause of the Fourteenth Amendment, for its part, has been interpreted by the Supreme Court to establish both procedural rules, *see, e.g.*, *Jones v. Flowers*, 547 U.S. 220 (2006), and substantive rights, *see, e.g.*, *Meyer v. Nebraska*, 262 U.S. 390 (1923).

23. How do these clauses apply to individuals that the Framers of the amendment likely did not have in mind, such as women? Or LGBTQ+ individuals?

Response: The Supreme Court has applied these constitutional provisions to discrimination based on sex, *see, e.g., United States v. Virginia*, 518 U.S. 515 (1996), and sexual orientation, *see, e.g.*, *Romer v. Evans*, 517 U.S. 620 (1996); *Lawrence v. Texas*, 539 U.S. 558 (2003); *Obergefell v. Hodges*, 576 U.S. 644 (2015). As with all other precedents of the Supreme Court, I would faithfully apply these decisions if confirmed. Because other matters related to this question are the subject of ongoing litigation, it would be improper for me as a judicial nominee to comment further.

24. Do you believe that judges should be "originalist" and adhere to the original public meaning of constitutional provisions when applying those provisions today?

Response: Please see my answer to Question 18.

25. If so, do you believe that courts should adhere to the original public meaning of the Foreign Emoluments Clause when interpreting and applying the Clause today?

Response: Please see my answer to Question 18.

26. Under the U.S. Constitution, who is entitled to First Amendment protections?

Response: In the First Amendment context, the Supreme Court has instructed that "while laws favoring some speakers over others demand strict scrutiny when the legislature's speaker preference reflects a content preference, such scrutiny is unwarranted when the differential treatment is justified by some special characteristic of the particular speaker being regulated." *TikTok Inc. v. Garland*, 145 S. Ct. 57, 68 (2025) (citations and internal quotation marks omitted) (quoting *Minneapolis Star & Tribune Co. v. Minnesota Comm'r of Revenue*, 460 U.S. 575, 585 (1983)). I would faithfully apply that case and other precedents of the Supreme Court and the Sixth Circuit in this area of doctrine. To the extent this question asks about hypothetical cases or matters that are the subject of ongoing litigation, it would be improper for me as a judicial nominee to comment further.

27. 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: As with any other question, I would faithfully apply the precedents of the Supreme Court and the Sixth Circuit as relevant to this question. Recent cases providing instruction on this topic include *Reed v. Town of Gilbert*, 576 U.S. 155 (2015); *City of Austin, Texas v. Reagan Nat'l Advertising of Austin, LLC*, 596 U.S. 61 (2022); and *TikTok Inc. v. Garland*, 145 S. Ct. 57 (2025). Among other things, those cases instruct that a "regulation of speech is facially content based under the First Amendment if it target[s] speech based on its communicative content—that is, if it applies to particular speech because of the topic discussed or the idea or message expressed." *City of Austin*, 596 U.S. at 69 (quoting *Reed*, 576 U.S. at 163). By contrast, the law in *City of Austin* was content neutral because it "require[d] an examination of speech only in service of drawing neutral, location-based lines." *Id.* I would resolve any questions implicating these issues through the judicial process and careful consideration and application of the parties' arguments and the governing law and precedents.

28. What is the standard for determining whether a statement is protected speech under the true threats doctrine?

Response: The Supreme Court has instructed that "[t]rue threats" of violence is [a] historically unprotected category of communications." *Counterman v. Colorado*, 660 U.S. 66, 74 (2023) (citation omitted). In the Supreme Court's words, "true threats are serious expressions conveying that a speaker means to commit an act of unlawful violence." *Id.* (cleaned up). I would faithfully apply these and other precedents of the Supreme Court and the Sixth Circuit regarding the true-threat doctrine.

29. Is every individual within the United States entitled to due process?

Response: The Fifth and Fourteenth Amendments to the U.S. Constitution provide, respectively, that no person shall "be deprived of life, liberty or property, without due process of law" and that no State shall "deprive any person of life, liberty, or property, without due process of law." U.S. Const., amends. V, XIV. The Supreme Court has stated that "the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). The Supreme Court further has an extensive body of precedents discussing what due process requires in various contexts. If I am confirmed, I would faithfully apply the relevant precedents of the Supreme Court and the Sixth Circuit in addressing due-process claims. To the extent this question asks about hypothetical cases or matters that are the subject of ongoing litigation, it would be improper for me as a judicial nominee to comment further.

30. Can U.S. citizens be transported to other countries for the purpose of being detained, incarcerated, or otherwise penalized?

Response: Please see my preceding answer.

31. The Fourteenth Amendment states: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."

a. Is every person born in the United States a citizen under the Fourteenth Amendment?

Response: Because this question asks about matters that are the subject of ongoing litigation, it would be improper for me as a judicial nominee to opine on it. *See* Code of Conduct of U.S. Judges, Canon 3A(6).

b. Is the citizenship or immigration status of the parents of an individual born in the United States relevant for determining whether the individual is a citizen under the Fourteenth Amendment?

Response: Because this question asks about matters that are the subject of ongoing litigation, it would be improper for me as a judicial nominee to opine on it. *See* Code of Conduct of U.S. Judges, Canon 3A(6).

32. Do you believe that demographic and professional diversity on the federal bench is important? Please explain your views.

Response: Yes, nobody should ever be excluded from the opportunity to serve as a judge based on race, ethnicity, sex, religion, or any other protected characteristic. My experience in law and life has commended the value of sharing experiences with persons of varying backgrounds, life experiences, and viewpoints. Being an effective lawyer depends upon one's ability to effectively intake, understand, and articulate a diverse range of methodological and legal viewpoints. If I am fortunate enough to be confirmed, I would look forward to learning from and building relationships with my colleagues on the Sixth Circuit and other courts.

33. The bipartisan *First Step Act of 2018*, which was signed into law by President Trump, is one of the most important pieces of criminal justice legislation to be enacted during my time in Congress. At its core, the Act was based on a few key, evidence-based principles. First, incarcerated people can and should have meaningful access to rehabilitative programming and support in order to reduce recidivism and help our communities prosper. Second, overincarceration through the use of draconian mandatory minimum sentences does not serve the purposes of sentencing and ultimately causes greater, unnecessary harm to our communities. With these rehabilitative principles in mind, one thing Congress sought to achieve through this Act was giving greater discretion to judges—both before and after sentencing—to ensure that the criminal justice system effectively and efficiently fosters public safety for the benefit of all Americans.

a. How do you view the role of federal judges in implementing the *First Step Act*?

Response: As with any other source of constitutional or statutory law, judges are to faithfully and impartially apply the requirements of the First Step Act, and precedents interpreting it, whenever applicable. What those requirements might direct in a given case is a hypothetical matter on which it would be inappropriate for me to opine as a judicial nominee.

b. Will you commit to fully and fairly considering appeals that come before you when reviewing sentencing law and its application to ensure that criminal sentences are properly tailored to promote the goals of sentencing and avoid terms of imprisonment in excess of what is necessary?

Response: I commit to faithfully and impartially applying all applicable laws and precedents that govern the sentencing of criminal defendants.

34. The Federalist Society seeks to "reorder[] priorities within the legal system to place a premium on individual liberty, traditional values, and the rule of law."

a. In your Questionnaire, you state that you are currently or were previously a member of the Federalist Society. What is your understanding of "traditional values"?

Response: I am unfamiliar with that statement, its context, or what its author intended to reference.

b. President Trump wrote on Truth Social that the Federalist Society gave him "bad advice" on "numerous Judicial Nominations." He also wrote that Leonard Leo is a "sleazebag" who "probably hates America." If you are not familiar with this post, please refer to it in the footnote.[1]

i. Do you agree with President Trump that the Federalist Society provided President Trump with bad advice during his first term? Why or why not?

Response: Consistent with the Code of Judicial Conduct and positions taken by prior nominees, it would be inappropriate for me, as a pending judicial nominee, to comment on the statements of any political figure or on any subject of political controversy.

ii. Do you agree with President Trump that Leo is a sleazebag who probably hates America? Why or why not?

[1] Donald J. Trump (@realDonaldTrump), Truth Social (May 29, 2025, 8:10 PM), https://truthsocial.com/@realDonaldTrump/posts/114593880455063168.

Response: Please see my preceding answer.

iii. **If you are confirmed, do you plan to remain affiliated with the Federalist Society?**

Response: If confirmed, I would evaluate all of my associations and memberships for consistency with 28 U.S.C. § 455, the Code of Conduct for United States Judges, and any and all other laws, rules, and practices governing such circumstances.

c. **During your selection process, have you spoken to or corresponded with any individuals associated with the Federalist Society, including Leonard Leo or Steven G. Calabresi? If so, please provide details of those discussions.**

Response: I have not spoken to or corresponded with any individuals associated with the Federalist Society as part of my selection process.

d. **Have you ever been asked to and/or provided services to the Federalist Society, including research, analysis, advice, speeches, or appearing at events?**

Response: Yes, as disclosed on my Senate Judiciary Questionnaire.

e. **Have you ever been paid honoraria by the Federalist Society? If so, how much were you paid, and for what services?**

Response: No.

35. The Teneo Network states that its purpose is to "Recruit, Connect, and Deploy talented conservatives who lead opinion and shape the industries that shape society."

a. **In your Questionnaire, you state that you are currently or were previously a member of the Teneo Network. How many meetings have you attended since joining?**

Response: One, prior to my nomination.

b. **During your selection process, have you spoken to or corresponded with any individuals associated with the Teneo Network, including Leonard Leo? If so, please provide details of those discussions.**

Response: I am unaware of the full composition of the Teneo Network's membership. To my knowledge, I have not spoken to or corresponded with any individuals associated with the Teneo Network as part of my selection process.

c. Have you ever been asked to and/or provided services to the Teneo Network, including research, analysis, advice, speeches, or appearing at events?

Response: No.

d. Have you ever been paid honoraria by the Teneo Network? If so, how much were you paid, and for what services?

Response: No.

36. The Heritage Foundation states that its mission is to "formulate and promote public policies based on the principles of free enterprise, limited government, individual freedom, traditional American values, and a strong national defense." Heritage Action, which is affiliated with the Heritage Foundation, seeks to "fight for conservative policies in Washington, D.C. and in state capitals across the country."

a. During your selection process, have you spoken to or corresponded with any individuals associated with the Heritage Foundation or Heritage Action, including Kevin D. Roberts? If so, please provide details of those discussions.

Response: I have not spoken to or corresponded with any individuals associated with Heritage as part of my selection process.

b. Have you ever been asked to and/or provided services to the Heritage Foundation or Heritage Action, including research, analysis, advice, speeches, or appearing at events?

Response: I once appeared as part of a panel event located at the Heritage Foundation to discuss the work of the Office of the Tennessee Attorney General.

c. Were you ever involved in or asked to contribute to Project 2025 in any way?

Response: No.

d. Have you ever been paid honoraria by the Heritage Foundation or Heritage Action? If so, how much were you paid, and for what services?

Response: No.

37. The America First Policy Institute (AFPI) states that its "guiding principles are liberty, free enterprise, national greatness, American military superiority, foreign-policy engagement in the American interest, and the primacy of American workers, families, and communities in all we do."

a. During your selection process, have you spoken to or corresponded with any individuals associated with AFPI? If so, please provide details of those discussions.

Response: Not to my knowledge.

b. Have you ever been asked to and/or provided services to AFPI, including research, analysis, advice, speeches, or appearing at events?

Response: No.

c. Have you ever been paid honoraria by AFPI? If so, how much were you paid, and for what services?

Response: No.

38. The America First Legal Institute (AFLI) states that it seeks to "oppose the radical left's anti-jobs, anti-freedom, anti-faith, anti-borders, anti-police, and anti-American crusade."

a. During your selection process, have you spoken to or corresponded with any individuals associated with AFLI, including Stephen Miller, Gene Hamilton, or Daniel Epstein? If so, please provide details of those discussions.

Response: I met Stephen Miller in passing while awaiting entry into the Oval Office prior to my meeting with President Trump. Otherwise, not to my knowledge.

b. Have you ever been asked to and/or provided services to AFLI, including research, analysis, advice, speeches, or appearing at events?

Response: No.

c. Have you ever been paid honoraria by AFLI? If so, how much were you paid, and for what services?

Response: No.

39. The Article III Project is an organization which claims that, "The left is weaponizing the power of the judiciary against ordinary citizens."

a. During your selection process, have you spoken to or corresponded with any individuals associated with the Article III Project, including Mike Davis, Will Chamberlain, or Josh Hammer? If so, please provide details of those discussions.

Response: Not to my knowledge.

b. Have you ever been asked to and/or provided services to the Article III Project, including research, analysis, advice, speeches, or appearing at events?

Response: No.

c. Have you ever been paid honoraria by the Article III Project? If so, how much were you paid, and for what services?

Response: No.

40. The Alliance Defending Freedom (ADF) states that it is "the world's largest legal organization committed to protecting religious freedom, free speech, the sanctity of life, marriage and family, and parental rights."

a. During your selection process, have you spoken to or corresponded with any individuals associated with ADF? If so, please provide details of those discussions.

Response: I have not spoken to or corresponded with individuals associated with ADF as part of my selection process.

b. Have you ever been asked to and/or provided services to ADF, including research, analysis, advice, speeches, or appearing at events?

Response: I was once asked to serve as a speaker on a panel at an ADF event; I did not participate as a speaker.

c. Have you ever been paid honoraria by ADF? If so, how much were you paid, and for what services?

Response: No.

41. The Concord Fund, also known as the Judicial Crisis Network, states that it is committed "to the Constitution and the Founders' vision of a nation of limited government; dedicated to the rule of law; with a fair and impartial judiciary." It is affiliated with the 85 Fund, also known as the Honest Elections Project and the Judicial Education Project.

a. During your selection process, have you spoken to or corresponded with any individuals associated with these organizations, including Leonard Leo or Carrie Severino? If so, please provide details of those discussions.

Response: Not to my knowledge.

b. Have you ever been asked to and/or provided services to these organizations, including research, analysis, advice, speeches, or appearing at events?

Response: No.

c. Have you ever been paid honoraria by these organizations? If so, how much were you paid, and for what services?

Response: No.

d. Do you have any concerns about outside groups or special interests making undisclosed donations to front organizations like the Concord Fund or 85 Fund in support of your nomination? Note that I am not asking whether you have solicited any such donations, I am asking whether you would find such donations to be problematic.

Response: I am unaware of what particular activities private groups and individuals might be undertaking to advocate for or against my confirmation. If I am confirmed, any public advocacy for or against my confirmation will be irrelevant to my decision-making as a judge. To the extent that this question is addressed to whether I think such donations should be made public as a policy matter, I do not believe that it would be appropriate for me, as a judicial nominee, to address such policy questions.

e. If you learn of any such donations, will you commit to call for the undisclosed donors to make their donations public so that if you are confirmed you can have this information when you make decisions about recusal in cases that these donors may have an interest in?

Response: I believe that both the appearance of impartiality and actual impartiality are important in maintaining public confidence in our system of justice. If confirmed, I will address all actual or potential conflicts of interest by reference to 28 U.S.C. § 455, the Code of Conduct for United States Judges, and any and all other laws, rules, and practices governing such circumstances. To the extent that this question is addressed to whether I think such donations should be made public as a policy matter, I do not believe that it would be appropriate for me, as a judicial nominee, to address such policy questions. Otherwise, please see my answer to Question 41.d.

f. Will you condemn any attempt to make undisclosed donations to the Concord Fund or 85 Fund on behalf of your nomination?

Response: Please see my answers to Questions 41.d-e.

Senator Mike Lee
Questions for the Record
Whitney D. Hermandorfer to be United States Circuit Judge for the United States Court of Appeals for the Sixth Circuit

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

   Response: I would begin addressing any question of constitutional interpretation by applying any applicable precedent of the Supreme Court or the Sixth Circuit construing the relevant provision. If such precedent does not resolve the question, then it would be appropriate to consider the original public meaning of the constitutional text—defined as the contemporaneous meaning a reasonably informed member of the community would have assigned to the words at the time of their adoption—as well as how that meaning would apply to the circumstances presented by the case. The Supreme Court has often employed that method of looking to the original public meaning of a constitutional provision to resolve cases and controversies.

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

   Response: To determine whether a particular group qualifies as a "suspect class," the Supreme Court has assessed whether the relevant individuals "exhibit obvious, immutable, or distinguishing characteristics that define them as a discrete group," *Bowen v. Gilliard*, 483 U.S. 587, 602 (1987), as well as whether the group is "politically powerless" or has experienced a history of discriminatory treatment, *Lyng v. Castillo*, 477 U.S. 635, 638 (1986); *see also City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440-41 (1985) (listing five protected classes).

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

   Response: The Supreme Court has instructed that the horizonal separation-of-powers—between the three branches of federal government—and the vertical separation-of-powers—between the federal government and state governments—are both vital structural features of our constitutional system that "safeguard individual liberty," promote political accountability, and permit policy experimentation. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 416 (2024) (Thomas, J., concurring) (citing A. Scalia, *Foreword: The Importance of Structure in Constitutional Interpretation* 83 Notre Dame L. Rev. 1417, 1418 (2008)). They do so, among other ways, by avoiding the consolidation of power, ensuring deliberative consideration of federal laws that bind the public, and allowing the public to assign the appropriate lawmakers and officials with political responsibility for laws and policies that affect them.

4. How would you evaluate a case in which one branch assumed an authority not granted it by the text of the Constitution?

Response: I would follow the appropriate judicial process on this or any other question that may come before me. Generally, I would begin addressing any question of constitutional interpretation by applying any applicable precedent of the Supreme Court or the Sixth Circuit construing the relevant provision or addressing similar scenarios of claimed authority. If such precedent does not resolve the question, then it would be appropriate to consider the original public meaning of the constitutional text as well as any structural inferences that might arise from the Constitution's separation and express enumeration of federal powers. The Supreme Court has also instructed that "the longstanding practice of the government" can inform judicial determination "of what the law is in a separation-of-powers case." *NLRB v. Noel Canning*, 573 U.S. 513, 514 (2014) (citations omitted).

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

Response: In the context of federal adjudication, I understand judicial review to refer to courts' Article III power to explicate the law and determine the constitutional or statutory validity of legal enactments or actions in the course of issuing judgments in particular cases and controversies. By contrast, I understand judicial supremacy to refer to the view that courts' decisions addressing the meaning of the Constitution reflect the only permissible constitutional reading and, unless and until subsequently reversed, should control other officials' constitutional interpretations even outside of the context of particular cases and controversies or issued judgments.

Nomination of Whitney Downs Hermandorfer
Nominee to the United States Court of Appeals for the Sixth Circuit
Questions for the Record
Submitted June 11, 2025

QUESTIONS FROM SENATOR WHITEHOUSE

1. You said in your questionnaire that you met with President Trump regarding your possible nomination on April 29.

    a. What did you discuss in that meeting?

    Response: We discussed my background as a Tennessean and former college basketball player, as well as my legal credentials and qualifications for a position as a judge on the United States Court of Appeals for the Sixth Circuit.

    b. Did President Trump ask you to make any commitments? If yes, please describe.

    Response: No.

2. You said during your nominations hearing that you were invited to join the Teneo Network approximately one week before your nomination was announced.

    a. In your words, what is the Teneo Network?

    Response: I understand it to be a group of conservative professionals from various sectors who periodically participate in educational, social, and networking events.

    b. Why did you join?

    Response: I joined upon the recommendation of current colleagues.

    c. What activities have you participated in as part of that group?

    Response: Prior to my nomination, I attended one networking event with colleagues.

    d. Leonard Leo declared in a November 2024 NPR interview that his goal with the Teneo Network is to "crush liberal dominance" across American life. Do you agree with Leo's goal?

    Response: If I were confirmed as a judge, my only goal would be to faithfully carry out my duty to neutrally and impartially apply the governing laws to the cases at hand. As a judicial nominee, it would be inappropriate for me to comment on partisan or political statements.

e. Why do you think you were asked to join one week before the announcement of your nomination?

Response: It is my understanding that my invitation was among a broader group of invitations that the Teneo Network typically extends around the same time each year.

3. You said in your questionnaire that you have been a member of the Federalist Society since 2011. Recently, President Trump said he was "so disappointed" with the Federalist Society's "bad advice" on nominees, calling Leonard Leo a "sleazebag" and a "bad person who, in his own way, probably hates America."

a. Do you agree with President Trump that Leonard Leo is a "sleazebag"? Why or why not?

Response: Consistent with the Code of Conduct and positions taken by prior nominees, it would be inappropriate for me, as a pending judicial nominee, to comment on the statements of any political figure or on any subject of political controversy.

b. Do you agree with President Trump that Leonard Leo is a "bad person who, in his own way, probably hates America"? Why or why not?

Response: See previous answer.

4. On March 18, 2024, you testified before the House Financial Services Committee at a field hearing in Tennessee on the SEC climate disclosure rule.

a. During that testimony, you referred several times to a "climate agenda." Please explain what you meant by that.

Response: To the best of my recollection, I was referring to climate-related agreements and pledges—like Climate Action 100+ and The Net Zero Asset Managers initiative—signed by various financial-industry participants and other entities, *see, e.g.*, Office of the Tenn. Att'y Gen. & Reporter, *Attorney General Jonathan Skrmetti Announces Landmark Settlement with BlackRock, Inc. Regarding ESG Practices* (Jan. 17, 2025, 10:50 am), https://tinyurl.com/m4rd9zxy, as well as other "whole of government" directives regarding the promotion of climate-related priorities across federal agencies.

b. Do you believe climate change is real, human caused, and an existential threat to society? If you answered no on any of these points, please explain.

Response: The Supreme Court has described "climate change" as a "controversial subject[]" and "sensitive political topic[]." *Janus v. AFSCME, Council*, 585 U.S. 878, 913-14 (2018). It would be inappropriate for me as a judicial nominee to opine on this or any other subject of political controversy. If I were to receive a case that

involves environmental regulation or policies, I would carefully review the parties' briefs, the record, and apply the relevant laws to the facts before me; any personal beliefs regarding climate change would not be relevant to the disposition of the case.

5. Have you had any conversations with members of the Trump administration concerning your personal views on any policy or case law? If so, please describe those conversations with specificity.

Response: In interviewing for the nomination with the White House Counsel's Office, I discussed my beliefs regarding the designated role of Article III judges in our constitutional system and the importance of judges' faithfully and neutrally applying the governing laws in the cases that come before them. To the best of my recollection, we also discussed my current understanding of the Supreme Court's binding precedents in a handful of constitutional areas. I do not recall discussing any other personal views about policy or case law; it is a fundamental tenet of our federal judicial system that judges are not to decide cases based on their personal views or policy preferences.

6. Do you believe it is appropriate to impeach judges solely for ruling against the executive branch?

Response: The U.S. Constitution vests the impeachment power in Congress. *See* U.S. Const., art. I, §§ 2-3. As a judicial nominee, it would be inappropriate to express any view about the legal validity of Congress's hypothetical exercise of that political power in the context of judicial officers or an opinion about whether any given ruling would warrant impeachment. *See* Code of Conduct of U.S. Judges, Canons 3(A)(6), 5.

7. Please explain your understanding of existing case law regarding:

a. The executive branch's obligation to comply with federal court orders.

Response: I have not had occasion to study these questions exhaustively; my general understanding of the relevant legal considerations is as follows. If there is a lower court order that binds the Executive Branch or an executive official or agency, the normal course is for the party to follow the order and seek appellate review if the party disagrees with the outcome; if the Supreme Court issues an order upon the conclusion of appellate review, that order is to be followed. With respect to potential exceptions to that rule, I am aware of scholarly work that has posited scenarios in which parties, including the Executive Branch or one of its officers, departments, or agencies, might permissibly disregard a court order. *See generally, e.g.*, William Baude, *The Judgment Power*, 96 Geo. L.J. 1807 (2008) (lack of jurisdiction); Gary Lawson & Christopher D. Moore, *The Executive Power of Constitutional Interpretation*, 81 Iowa L. Rev. 1267, 1326 (1996) (constitutional error "so clear that it is not open to rational question"); *see also* 17 Corpus Juris Secundum Contempt §§ 56-65 (discussing contempt defenses). I am also aware of the legal distinction that parties and jurists have drawn between a court's binding "judgment[]" and its "statements in opinions." *Camreta v. Greene*, 563 U.S. 692, 704 (2011); *see* Abraham Lincoln, First Inaugural Address (Mar. 4, 1861) (discussing *Dred*

Scott v. Sanford). And I am generally aware that certain interlocutory orders might be immediately appealable only via the avenue of a contempt finding. *See, e.g.*, *Mohawk Industries, Inc. v. Carpenter*, 558 U.S. 100, 111 (2009) ("Another long-recognized option is for a party to defy a disclosure order and incur court-imposed sanctions."). In *U.S. ex rel. Pogue v. Diabetes Treatment Centers of Am., Inc.*, the Sixth Circuit explained that the "general rule" is that a non-party "seeking to appeal a discovery order must first disobey the order and suffer a contempt citation." 444 F.3d 462, 471 (6th Cir. 2006) (citing *Alexander v. United States*, 201 U.S. 117, 121-22 (1906)). Because a case involving these issues could come before me if I were confirmed as a judge, it would be inappropriate to provide an answer that categorically pre-determines the validity of potential legal arguments for or against adhering to court orders. If any such issues came before me, I would commit to resolving them through the judicial process through careful consideration and application of the parties' arguments and the governing law and precedents.

b. Remedies available to a federal court to ensure executive branch compliance with a court order.

Response: It is my understanding that federal courts typically seek to ensure compliance with court orders through sanctions and civil and criminal contempt procedures, as well as by requiring that parties file status reports and make court appearances to explain compliance efforts and progress.

c. Federal government lawyers' duty of candor to federal courts before which those lawyers appear.

Response: Federal government lawyers are subject to the applicable rules of professional practice and ethics that govern all attorneys and officers of the court. In Tennessee, for instance, Rule 3.3 of the Tennessee Supreme Court's Rules of Professional Conduct sets outs attorneys' obligation of "candor towards the tribunal." That rule prohibits, among other things, knowingly making a false statement of fact or law to a tribunal, knowingly failing to disclose adverse, controlling legal authority, or offering evidence an attorney knows to be false. *See id.* How those obligations interact with rules regarding attorneys' obligation to maintain client confidentiality and privilege, *cf. id.* cmt. 8 to Rule 3.3 ("Confidentiality under RPC 1.6 prevails over the lawyer's duty of candor to the tribunal."), or related doctrines implicates fact- and case- specific questions that could arise before me as a judge and on which it would be inappropriate for me to further comment as a judicial nominee.

d. The president's legal obligations under the Constitution's Take Care Clause.

Response: The Take Care Clause in the U.S. Constitution directs that the President "shall take Care that the Laws be faithfully executed." U.S. Const., art. II, § 3, cl. 5. The Supreme Court has cited the Take Care Clause as a source of the President's authority to "oversee executive officers through removal," *Seila Law LLC v. CFPB*, 591 U.S. 197, 213 (2020) (quotation omitted), as well as the power to engage in

"enforcement of federal … laws passed by Congress," *Trump v. United States*, 603 U.S. 593, 627 (2024), including by "mak[ing] arrests and prosecut[ing] offenses on behalf of the United States," *United States v. Texas*, 599 U.S. 670, 678-79 (2023). The Supreme Court has further instructed that, under the Take Care Clause and the Vesting Clause, *see* Art. II, § 1, cl. 1, the Executive Branch possesses certain authority and discretion to prioritize enforcement of federal law. *See, e.g.*, *Texas*, 599 U.S. at 679; *Heckler v. Chaney*, 470 U.S. 821, 832 (1985). How these or any other Supreme Court cases regarding the Take Care Clause may apply to a course of action by the President is an issue that could arise before me as a judge; thus, as a judicial nominee, it would be inappropriate for me to provide further comment. *See* Code of Conduct of U.S. Judges, Canon 3A(6).

e. The limits of the executive branch's power under the anti-commandeering doctrine.

Response: The discussion of this topic with which I am most familiar is contained in the Supreme Court's decision in *Printz v. United States*, 521 U.S. 898 (1997), and the cases discussed therein. *Printz* deemed unconstitutional the federal Brady Act's imposition of certain background-check obligations on state law enforcement officers. *Id.* at 933-34. How Supreme Court cases regarding the anti-commandeering doctrine may apply to the Executive Branch is an issue that could arise before me as a judge; thus, as a judicial nominee, it would be inappropriate for me to provide further comment. *See* Code of Conduct of U.S. Judges, Canon 3A(6).

f. The president's ability or inability to impound congressionally appropriated funds.

Response: I am aware that the issue regarding the Executive Branch's withholding of authorized funds was addressed by the Supreme Court's decision in *Train v. City of New York*, 420 U.S. 35 (1975). That case concluded that the EPA Administrator's withholding of certain federal funds authorized under the Federal Water Pollution Control Act Amendments of 1972 was inconsistent with the relevant "statutory language and its legislative history." *Id.* at 43. I am also generally aware of the Impoundment Control Act of 1974, 2 U.S.C. § 681 *et seq.*, which provides various procedures for addressing budget and funding issues. How Supreme Court precedent and statutory or constitutional rules govern the President's ability or inability to impound congressionally appropriated funds is an issue implicated by active litigation and that could arise before me as a judge. Thus, as a judicial nominee, it would be inappropriate for me to provide further comment on how the legal rules might apply. *See* Code of Conduct of U.S. Judges, Canon 3A(6).

g. The federal government's ability to enact laws or regulations that burden Second Amendment rights.

Response: As it relates to the federal government, the caselaw on this topic with which I am most familiar comprises the Supreme Court's decisions in *District of*

Columbia v. Heller, 554 U.S. 570 (2008), *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022), and *United States v. Rahimi*, 602 U.S. 680 (2024). *Heller* held that the Second Amendment protects an individual right to keep and bear arms for self-defense while instructing that the decision should not be read to "cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms" or arms that are not "in common use." 554 U.S. at 626-27. *Bruen* held that the Second Amendment protects carrying arms "in public for self-defense," 597 U.S. 33, and that New York's permitting regime, which limited public-carry permits only to those who demonstrate a "special need for self-protection," violated the Second Amendment, *id.* at 12-13, 45-46. Assessing a federal statute that applied to persons subject to a domestic violence restraining order, *Rahimi* concluded that "[a]n individual found by a court to pose a credible threat to the physical safety of another may be temporarily disarmed consistent with the Second Amendment." 602 U.S. at 702. The permissible scope of firearms regulation is an issue implicated by active litigation and that could arise before me as a judge. As a judicial nominee, it would be inappropriate for me to provide further comment on how the legal rules might apply. *See* Code of Conduct of U.S. Judges, Canon 3A(6).

h. The federal government's ability to enact generally applicable laws that are not motivated by animus but nonetheless burden religious practices.

Response: That issue implicates caselaw interpreting the First Amendment to the U.S. Constitution as well as federal statutes including the Religious Freedom Restoration Act of 1993 (RFRA), 42 U.S.C. § 2000bb *et seq.*, and the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C. § 2000cc *et seq.* In *Employment Division, Dept. of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990), the Supreme Court held that "neutral, generally applicable laws that incidentally burden the exercise of religion usually do not violate the Free Exercise Clause of the First Amendment." *Holt v. Hobbs*, 574 U.S. 352, 357 (2015). In response, Congress passed RFRA, which applies to the federal government and "provide[s] greater protection for religious exercise than is available under the First Amendment." *Id.* RFRA states that the "[g]overnment shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, unless the government demonstrates that application of the burden to the person—(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." *Id.* (quoting 42 U.S.C. §§ 2000bb–1(a), (b)). Congress then adopted RLUIPA, which applies those standards to land-use regulation and religious exercise by institutionalized persons. *Id.* at 357-58. These matters are subject to active litigation and could arise before me as a judge. As a judicial nominee, it would be inappropriate for me to provide further comment on how the legal rules might apply. *See* Code of Conduct of U.S. Judges, Canon 3A(6).

8. As a practicing attorney, have you ever sought a nationwide injunction or similar relief in federal court, or, as a judge, have you ever issued a nationwide injunction or similar relief? If yes, please list and describe each case.

Response: As an attorney representing private clients and the State of Tennessee, I have sought injunctive relief against the implementation of federal agency action. Although parties and jurists have flagged the potential difference between "nationwide injunction[s]" and vacatur or a stay of federal agency actions and promulgations under the Administrative Procedure Act (APA), *see Corner Post, Inc. v. Board of Governors of Fed. Reserve Sys.*, 603 U.S. 799, 838 (2024) (Kavanaugh, J., concurring), I also have sought vacatur and stays under the APA on behalf of clients affected by nationwide, binding federal rules. Examples of such cases, which include *Tennessee v. Cardona*, 2:24-cv-072 (E.D. Ky.); *Tennessee v. Becerra*, 1:24-cv-161 (S.D. Miss.); *Tennessee v. EEOC*, 2:24-cv-84 (E.D. Ark.); and *American Home Furnishings Alliance v. CPSC* (5th Cir. No. 23-477), are listed on my Senate Judiciary Questionnaire.

a. Have you ever publicly voiced support or opposition regarding a federal court's issuance of a nationwide injunction or similar relief? If yes, please describe.

Response: Other than in my capacity as an attorney representing clients through the filing of legal briefs, I have not publicly voiced support or opposition regarding a federal court's issuance of a nationwide injunction or similar relief.

b. Do you believe that a federal judge issuing a nationwide injunction or similar relief against the executive branch is equivalent to a coup d'etat?

Response: I believe it is important for all federal judges to abide the constitutional, statutory, and equitable limits on their authority to exercise the "judicial Power" under Article III of the U.S. Constitution. And I would endeavor to abide those limits if confirmed. Consistent with the Code of Conduct and positions taken by prior nominees, it would be inappropriate for me, as a pending judicial nominee, to provide any further comment that could be taken to opine on statements by political figures or the broader political debate regarding the permissible criticism of judges.

c. Do you believe that a federal judge who issues a nationwide injunction or similar relief against the executive branch is equivalent to insurrection?

Response: My understanding of the current doctrine is that, in certain cases, the U.S. Supreme Court has authorized entry of nationwide equitable relief or vacatur against Executive Branch officials or agency promulgations. If confirmed, I would carefully apply those precedents as well as any other constitutional, statutory, and equitable limits on judges' authority to exercise the "judicial Power" under Article III of the U.S. Constitution. Consistent with the Code of Conduct and positions taken by prior nominees, it would be inappropriate for me, as a pending judicial nominee, to provide any further comment that could be taken to opine on statements by political figures or the broader political debate regarding the permissible criticism of judges.

d. Do you believe that a federal judge who issues a nationwide injunction or similar relief against the executive branch is an activist judge?

Response: See prior answer.

9. Please describe your understanding of natural law.

Response: I understand natural law to refer to the idea that certain rights are endowed in all humans by nature or some divine source. *See generally* J. Locke, Two Treatises of Government (Peter Laslett ed., 2d ed. 1967).

a. What authority does natural law carry in federal case law?

Response: I have not studied this issue extensively, nor am I aware of any Supreme Court case that definitively addresses the role of natural law in constitutional interpretation.

b. When do you think it is appropriate for a federal judge to rely on natural law?

Response: In interpreting the Constitution, I would employ methodologies consistent with the methods of interpretation that the Supreme Court employs when it undertakes to interpret constitutional provisions. As a judicial nominee, it would be inappropriate for me to opine on hypothetical cases or abstract issues implicating natural law.

c. If confirmed, do you plan to incorporate natural law into your decisions?

Response: See previous answer.

10. Please describe your understanding of originalism.

Response: Originalism is a method of constitutional interpretation that requires a judge to apply his or her best understanding of the original public meaning of a constitutional provision.

a. Do you consider yourself an originalist?

Response: In interpreting the Constitution, I would employ methodologies consistent with the methods of interpretation that the Supreme Court employs when it undertakes to interpret constitutional provisions. The Court has routinely interpreted various constitutional provisions by attempting to discern the original meaning of the words used as understood by the public at the time of the Founding.

b. Do you believe that people who do not support or adhere to originalism do not like America?

Response: Consistent with the Code of Conduct and positions taken by prior nominees, it would be inappropriate for me, as a pending judicial nominee, to comment on jurists, statements by political figures, or the broader political debate regarding the permissible criticism of judges.

c. Based on your understanding of originalism, was *Citizens United v. Federal Election Commission* an originalist decision? Why or why not?

Response: The opinions in *Citizens United v. FEC* discuss the evidence and sources of authority on which the respective opinions relied. I have not had occasion to study whether *Citizens United* is consistent with originalism, and would follow that and other binding precedents of the Supreme Court regardless.

d. Based on your understanding of originalism, was *Trump v. United States* an originalist decision? Why or why not?

Response: The opinions in *Trump v. United States* discuss the evidence and sources of authority on which the respective opinions relied. I have not had occasion to study whether *Trump* is consistent with originalism, and would follow that and other binding precedents of the Supreme Court regardless.

11. Please describe your understanding of textualism.

Response: Textualism calls for a judge to interpret the text as it was written, assigning the meaning it had at the time of its enactment. Context surrounding a law's passage can be probative to a textualist to the extent that context sheds light on the original public meaning of the statutory text.

a. Do you consider yourself a textualist?

Response: In approaching statutory interpretation, I would follow the methodological instructions of the Supreme Court. The Supreme Court has instructed that the best meaning of statutory text, as assessed by the time of enactment, is generally entitled to controlling weight. That is the approach I would follow, along with any other relevant instructions.

b. How should a court analyzing a federal statute account for the "Findings" or "Purposes" sections of such statutes?

The Supreme Court has instructed that such sections, as well as other indicia of meaning like section titles or captions, can permissibly factor as inputs when interpreting the best meaning of a statutory provision. *See, e.g.*, *Yates v. United States*, 574 U.S. 528, 539 (2015); A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts* 217 (discussing "prefatory-materials canon"). It would be inappropriate for me, as a pending judicial nominee, to comment further on

particular hypotheticals about how a "Findings" or "Purposes" section might or might not affect a statutory analysis.

12. Please describe your understanding of the different roles of district and appellate courts with respect to fact-finding.

Response: My general understanding is that district courts, as the trial courts, maintain primary responsibility for resolving questions of fact and credibility. In contrast to legal questions, which are reviewed de novo, district courts' resolution of disputed questions of fact or credibility are generally reviewed by appellate courts under more lenient standards such as "clear error" or "abuse of discretion." Under those standards, appellate courts generally "may not set those findings aside unless, after examining the entire record," the court is "left with the definite and firm conviction that a mistake has been committed." *Alexander v. South Carolina State Conf. of the NAACP*, 602 U.S. 1, 18 (2024) (citation omitted).

a. What deference should courts grant facts found by Congress when reviewing legislation expanding or limiting individual rights?

Response: Depending upon the constitutional status of the right at issue, courts engage in varying levels of review of legislatively found facts. Laws that do not implicate fundamental rights or any suspect characteristic, for instance, are subject to rational-basis review. Under that standard, courts are to afford legislation a "strong presumption of validity," and may uphold rational legislation even in "the absence of 'legislative facts.'" *FCC v. Beach Commc'ns, Inc.*, 508 U.S. 307, 314 (1993). By contrast, courts engage in a more stringent assessment of lawmakers' rationales and evidentiary bases under heightened standards of constitutional review like intermediate and strict scrutiny.

b. Separate from legal holdings, are lower courts bound to adhere to factual findings by the Supreme Court?

Response: Whether the Supreme Court's treatment of given facts would bind lower courts in other cases would turn on a fact-, opinion-, and case-specific analysis on which it would be inappropriate for me, as a judicial nominee, to opine in the abstract.

c. What standard will you use to determine when it is appropriate to depart from otherwise binding appellate case law because of differences in the facts of a case?

Response: I would consult the parties' briefs regarding the binding import of any cited precedent, as well as any governing caselaw from the Supreme Court and the Sixth Circuit or decisions discussing the role of precedents in analogous contexts with asserted factual differences. My general understanding of the standard of this area is that "[f]or one decision to be precedent for another, the facts in the two cases need not be identical" but "must be substantially similar, without material difference." B. Garner et al., *The Law of Judicial Precedent* 93 (2016).

13. If confirmed, how will you conduct historical analyses under *New York State Rifle & Pistol Association v. Bruen*?

Response: Under *Bruen*, I understand that judges are to evaluate whether a governmental regulation is "consistent with this Nation's historical tradition of firearm regulation." 597 U.S. at 17. *Bruen* and *Rahimi* provide additional guidance about how to engage in such analysis and the common-law, Ratification-era, and post-14th-Amendment sources that are most probative. If confirmed, I would follow those instructions from the Supreme Court.

a. As part of these historical analyses, will you solicit input from amici curiae?

Response: Amici curiae can provide information and contributions that aid the judicial decision-making process. I would welcome such contributions from amici curiae, including in cases implicating historical analyses relevant to applying *Bruen* or any other governing precedent. To the extent the panel concluded that additional historical information would be beneficial, soliciting party or amicus briefs addressing such information would be one potential path.

b. How will you assess the veracity of historical claims made by parties?

Response: I would endeavor to examine a range of historical and legal sources on a given topic, as well as any prior judicial opinions discussing relevant historical sources, to cross-check any historical claims to the best of my ability. I would also seek to obtain and examine original source materials to ensure they are being appropriately characterized, quoted, and cited by the sponsoring advocates.

c. How will you assess the veracity of historical claims made by amici curiae?

Response: See previous answer.

14. The U.S. Sentencing Commission recently prioritized the "[c]ompilation and dissemination of information on court-sponsored programs relating to diversion, alternatives-to-incarceration, and reentry." Courts can tailor these programs to meet specific needs of defendants before them. These include programs focused on mental health, substance use disorder, veterans, and juveniles.

a. Do you support the use of programs such as these?

Response: I have not encountered such programs in my practice. But I would carefully consider the recommendations regarding these programs offered by the U.S. Sentencing Commission or other entities that provide information to the judiciary.

b. If confirmed, what steps will you take to participate in or support programs such as these within the jurisdiction to which you would be confirmed?

Response: I would carefully consider the recommendations regarding these programs offered by the U.S. Sentencing Commission or other entities that provide information to the judiciary. I would also follow any directives regarding the use of such programs that might apply under the Sixth Circuit's rules or policies.

15. If confirmed, will you attend, to the extent possible, any trainings provided by the Federal Judicial Center for newly appointed judges—including on abiding with federal ethics laws and the Code of Conduct for United States Judges?

Response: I would endeavor to do so to the extent I am able consistent with any judicial obligations that may arise.

16. If confirmed, you will be called upon to maintain impartiality, which requires being open to legal arguments that may lead to outcomes you dislike.

a. If confirmed, what steps will you take to ensure that you are exposed and open to a range of ideological and legal viewpoints outside of the courtroom—in particular, those that you do not agree with?

Response: Being an effective lawyer depends upon one's ability to understand and articulate a range of ideological and legal viewpoints, including those that are contrary to one's position of advocacy in a given case. I have done my best to attend educational events and engage in reading on legal topics that present divergent viewpoints of scholars and jurists, as well as to promote an environment within my litigation teams in which debate and counter-arguments are promoted as useful rather than dismissed or mischaracterized. I would intend to carry forward this practice if confirmed as a judge.

b. During your time as a legal professional, including as a sitting judge, if applicable, what steps have you taken to ensure that you are exposed and open to a range of ideological and legal viewpoints—in particular, those that you do not agree with?

Response: See previous answer.

c. If confirmed, do you plan to hire qualified law clerks who do not share your ideological or legal viewpoints?

Response: My clerkship experience has commended the value that distinct views and approaches to legal questions can bring to the appropriate resolution of cases. I would seek to hire law clerks not based upon any particular view they hold with regard to ideology or the law, but instead based upon their entire applications and supporting materials and my assessment of who would be the best fit for the job, understand the proper role of a law clerk in our judicial system, and get along well with other law clerks and members of chambers.

17. If confirmed, do you plan to "boycott" the hiring of law clerks from any specific schools? If so, which schools and why?

Response: I have no plans to limit my hiring of law clerks from any particular set of schools. I instead intend to evaluate any potential clerk's entire application and supporting materials to determine whether that person is the best fit for the job.

a. Do you believe such boycotts are appropriate?

Response: I understand this question to implicate a matter of current political and public-policy controversy. Consistent with the Code of Conduct and positions taken by prior nominees, it would be inappropriate for me, as a pending judicial nominee, to opine on the issue.

18. If confirmed, you will be responsible for managing and exercising authority over law clerks and other court personnel.

a. What professional experience do you have overseeing and managing others?

Response: I have experience overseeing and managing others in various capacities. As a law clerk, I occasionally supervised judicial interns. As a senior law-firm associate, I routinely supervised more junior associates as well as other legal staff. In my current role as Director of Strategic Litigation in the Office of the Tennessee Attorney General, I currently maintain formal supervisory authority over a team of seven lawyers and one legal assistant in the Strategic Litigation Unit; I also exercise supervisory authority over additional attorneys and interns in the office on a case- and matter-specific basis.

b. How do you plan to recruit and hire law clerks?

Response: I would plan to take a holistic approach to recruiting and hiring law clerks, including by advertising any openings on the judiciary's clerkship hiring platform. I'd otherwise evaluate any potential clerk's entire application and supporting materials to determine whether that person is the best fit for the job.

19. If confirmed, do you have plans to integrate artificial intelligence into your work as a federal judge? If so, how?

Response: I have not considered the issue of whether and how to integrate artificial intelligence into my work should I be confirmed as a judge. I am aware that various legal entities are studying the issue, and that the Administrative Office of the Courts has issued guidance with respect to artificial intelligence. If confirmed I would consider and follow all relevant guidance and court-specific instructions on the topic.

20. Have you ever deleted any posts or publications originally published under your name or an account associated with you? If so, please provide those posts or publications in full.

Response: With respect to publications, the answer is no to the best of my recollection. With respect to posts, to the best of my recollection I have not deleted any posts relating to my professional role or legal matters. I suspect that, at some point over the two decades in which social media has been prevalent, I have previously deleted content like old pictures from personal social-media accounts. I cannot recall any particular instance of doing so nor the posts that would have been involved.

21. Have you ever asked for your name to be removed from any publication which previously bore your name? If so, please provide these publications in full.

Response: No.

22. Have you ever been accused, in any setting, of the following? If so, please describe the accusation with specificity, the actions you took in response, and how the accusation was resolved.

a. Sexual harassment?

Response: No.

b. Sex-based discrimination?

Response: No.

c. Race-based discrimination?

Response: No.

d. Discrimination on the basis of national origin?

Response: No.

e. Discrimination on the basis of religion?

Response: No.

f. Workplace misconduct of any kind?

Response: No.

23. Have you ever spoken with the following individuals or groups about your nomination? If so, please describe your conversations with them with specificity.

a. Leonard Leo

Response: No.

b. Carrie Severino

Response: No.

c. Mike Davis

Response: No.

d. The Article III Project

Response: No.

24. Do the Fifth and Fourteenth Amendments protect individuals' substantive, as well as procedural, rights?

Response: The Supreme Court has held that the Fifth and Fourteenth Amendments protect individuals' substantive, as well as procedural, rights.

25. What rights does the Constitution protect that are not expressly enumerated in the Constitution?

Response: In cases dating back to at least *Meyer v. Nebraska*, 262 U.S. 390 (1923), and *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), the Supreme Court has held that the liberty component of the Due Process Clause of the Fourteenth Amendment protects various rights not further enumerated in the constitutional text. Such rights include a constitutional right to privacy that protects a woman's right to use contraceptives, *see Griswold v. Connecticut*, 381 U.S. 479 (1965), and *Eisenstadt v. Baird*, 405 U.S. 438 (1972); a constitutional right to privacy that protects intimate relations between consenting adults, *see Lawrence v. Texas*, 539 U.S. 558 (2003); and the right to enter into a same-sex marriage, *see Obergefell v. Hodges*, 576 U.S. 644 (2015).

26. Is it ever lawful for the President to punish lawyers because of who they represent or what positions they take? If so, when?

Response: Under professional rules of practice, attorneys are ethically charged to zealously represent their clients even if politically unpopular. *See* Tenn. Rules of Professional Conduct, cmt. 1 to Rule 1.3. At the same time, there are many laws, rules, and ethical obligations that apply to attorneys when they are practicing or pursuing the course of a representation. The manner in which any such rules may apply to lawyers implicates matters that are the subject of ongoing litigation, so it would be improper for me as a judicial nominee to opine further on this issue.

27. Can the federal government deport immigrants with lawful status solely because of those immigrants' expression of a political view?

Response: Consistent with the Code of Conduct for United States Judges and the positions taken by prior nominees, it would be inappropriate for me, as a pending judicial nominee, to comment on abstract legal issues or hypotheticals or on matters that are the subject of ongoing litigation.

28. What protections does the Constitution offer to safeguard the freedom of the press?

Response: The First Amendment prohibits laws that impermissibly "abridge[e] the freedom of speech, or of the press," among other things. U.S. Const., amend. I. The Supreme Court has interpreted the First Amendment as imposing distinct limits on the government's ability to restrict or compel speech of the press, *see, e.g.*, *Miami Herald Pub. Co. v. Tornillo*, 418 U.S. 241 (1974), and has required heightened judicial scrutiny in the case of content- or viewpoint-based regulations of speech.

29. Can the federal government fire its employees for the sole reason that they espouse a disfavored political opinion?

Response: The Supreme Court has addressed the First Amendment rights of public employees in cases including *Pickering v. Board of Ed. of Township High School Dist. 205*, 391 U.S. 563 (1968); *Garcetti v. Ceballos*, 547 U.S. 410 (2006); and *Kennedy v. Bremerton School District*, 597 U.S. 507 (2022). If confirmed, I would follow those and any other relevant precedents of the Supreme Court and the Sixth Circuit. Consistent with the Code of Conduct for United States Judges and the positions taken by prior nominees, it would be inappropriate for me, as a pending judicial nominee, to comment further on abstract legal issues or hypotheticals.

30. Do you agree that campaign finance donor disclosure requirements "impose no ceiling on campaign-related activities" and "do not prevent anyone from speaking," as Justice Kennedy wrote for an 8-1 majority in *Citizens United*?

Response: If confirmed as a circuit judge, all Supreme Court pronouncements would be binding on me including any portions of the majority opinion in *Citizens United*. Consistent with the Code of Conduct and positions taken by prior nominees, it would be inappropriate for me, as a pending judicial nominee, to comment on the merits or demerits of the Supreme Court's binding precedents

31. Was *Korematsu v. United States* egregiously wrong the day it was decided?

Response: The Supreme Court has stated that "*Korematsu* was gravely wrong the day it was decided, has been overruled in the court of history, and—to be clear—has no place in law under the Constitution." *Trump v. Hawaii*, 585 U.S. 667, 710 (2018).

a. Do you agree with Chief Justice Roberts that "[t]he forcible relocation of U.S. citizens to concentration camps, solely and explicitly on the basis of race, is objectively unlawful"?

Response: As a circuit judge, I would follow Chief Justice Roberts's statement for the Supreme Court majority. Consistent with the Code of Conduct and positions taken by prior nominees, it would be inappropriate for me, as a pending judicial nominee, to comment on the merits or demerits of the Supreme Court's precedents.

32. The Seventh Amendment ensures the right to a jury "in suits at common law."

a. What role does the civil jury play in our constitutional system?

Response: In the Supreme Court's words, "[t]he right to trial by jury is of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right has always been and should be scrutinized with the utmost care." *SEC v. Jarkesy*, 603 U.S. 109, 121 (2024) (internal quotation marks omitted) (quoting *Dimick v. Schiedt*, 293 U.S. 474, 486 (1935)); *see also* Declaration of Independence ¶ 20.

b. Should the Seventh Amendment be a concern to judges when adjudicating issues related to the enforceability of mandatory pre-dispute arbitration clauses?

Response: The Seventh Amendment preserves the right to trial by jury "[i]n Suits at common law." U.S. Const., amend. VII. I have not researched or studied in detail how rules and precedents enforcing the Seventh Amendment apply in the arbitration context. If any such issues came before me, I would commit to resolving them through the judicial process through careful consideration and application of the parties' arguments and the governing law and precedents.

c. Should an individual's Seventh Amendment rights be a concern to judges when adjudicating issues surrounding the scope and application of the Federal Arbitration Act?

Response: See previous answer.

33. Did Joe Biden win the 2020 presidential election?

Response: President Biden was certified as the winner of the 2020 presidential election and served as the 46th President of the United States. To the extent this question seeks to elicit an answer that could be taken as opining on the broader political or policy debate regarding the conduct of the 2020 presidential election or on statements by any political figure, my response, consistent with the position of prior judicial nominees when asked questions regarding the 2020 election, is that it would be improper to offer any such comment as a judicial nominee. *See* Code of Conduct of U.S. Judges, Canons 3(A)(6), 5.

34. Yes or no: Was the U.S. Capitol attacked by a violent mob on January 6, 2021?

Response: The characterization of the conduct of persons located at the Capitol on January 6, 2021, is a matter of significant political debate. In addition, I am aware that the legal import of pardons issued to those prosecuted for involvement in events at the Capitol on January 6, 2021 is a matter subject to ongoing litigation and that could come before me were I confirmed as a judge. As a judicial nominee, it would thus be inappropriate for me to provide further comment. *See* Code of Conduct of U.S. Judges, Canon 3A(6).

a. Where were you on January 6, 2021?

Response: I was working from my home in Washington, DC.

35. Yes or no: Does the 22nd Amendment permit a president to be elected more than twice?

Response: No. *See* U.S. Const., amend. XXII ("No person shall be elected to the office of the President more than twice….").

Nomination of Whitney Hermandorfer to be
United States Circuit Judge for the Sixth Circuit
Questions for the Record
Submitted June 11, 2025

QUESTIONS FROM SENATOR COONS

1. **At any point during the process that led to your nomination, did you make any representations or commitments to anyone—including but not limited to individuals at the White House, at the Justice Department, or at outside groups—as to how you would handle a particular case, investigation, or matter, if confirmed? If so, explain fully.**

   Response: No.

   a. **At any point during the process that led to your nomination, were you asked about your opinion on any cases that involve President Trump or the Trump administration?**

      Response: No.

2. **In your Senate Judiciary Questionnaire, you note that, on April 29, 2025, you met with President Trump.**

   a. **Where did that meeting occur?**

      Response: The Oval Office.

   b. **How long did that meeting last?**

      Response: Around five to ten minutes.

   c. **Who attended the meeting other than you and President Trump?**

      Response: Vice President Vance, the White House Counsel, and an attorney from the White House Counsel's Office.

   d. **What was discussed at the meeting?**

      Response: We discussed my background as a Tennessean and former college basketball player, as well as my legal credentials and qualifications for a position as a judge on the United States Court of Appeals for the Sixth Circuit.

   e. **What questions were you asked by President Trump and how did you answer them?**

      Response: See preceding answer.

3. How would you describe your judicial philosophy?

Response: If confirmed, my philosophy would be to faithfully and fully carry out the Article III duties of judges on what the Constitution terms an "inferior" court to the "one [S]upreme Court." U.S. Const., art. III. Further, I would be bound to follow other oaths and obligations in exercising the Article III "judicial Power," including the oath of judges set out in 28 U.S.C. § 453 and the Canons of Judicial Conduct. Under those authorities, court of appeals judges are charged with neutrally and impartially applying all precedents of the Supreme Court and governing circuit precedent, as well as any other applicable laws or rules of decision that apply to Article III judges or legal cases and controversies. Judges are bound to apply the law fairly and impartially, even when the result reached in doing so does not align with their policy preferences.

4. With respect to substantive due process, what factors do you look to when a case requires you to determine whether a right is fundamental and protected under the Fourteenth Amendment?

Response: In addressing such questions if I were fortunate enough to be confirmed, I would faithfully apply the standards set forth in applicable Supreme Court precedent.

a. Would you consider whether the right is expressly enumerated in the Constitution?

Response: Yes, as consistent with any applicable precedent of the Supreme Court. *See, e.g.*, *Timbs v. Indiana*, 586 U.S. 146, 151 (2019) (addressing whether the Fourteenth Amendment's Due Process Clause incorporates the enumerated protection of the Eighth Amendment's Excessive Fines Clause); *McDonald v. City of Chicago*, 561 U.S. 742, 767 (2010) (same for Second Amendment).

b. Would you consider whether the right is deeply rooted in this nation's history and tradition? If so, what types of sources would you consult to determine whether a right is deeply rooted in this nation's history and tradition?

Response: Yes, using the instruction and types of sources set forth in *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215, 237-40 (2022), as well as other Supreme Court precedents pertaining to this issue.

c. Would you consider whether the right has previously been recognized by Supreme Court or circuit precedent? What about the precedent of another court of appeals?

Response: Yes. If any applicable precedent of the Supreme Court or the Sixth Circuit recognized the right at issue, that would control the analysis. In the

absence of any such precedent, any relevant decisions of other circuits may be consulted for their persuasive value.

d. Would you consider whether a *similar* right has previously been recognized by Supreme Court or circuit precedent?

Response: Yes.

e. What other factors would you consider?

Response: I would consider any other factor that the Supreme Court's or Sixth Circuit's precedents identify as relevant to assessing whether the constitution protects an asserted right under a substantive-due-process theory.

5. When, if ever, is it permissible for a circuit court to overturn its own precedent? Please explain.

Response: I would follow the practices and precedents of the Sixth Circuit with respect to overturning circuit precedent. In the Sixth Circuit, "a three-judge panel may not overturn a prior decision unless a Supreme Court decision mandates modification of [circuit] precedent." *RLR Invs., LLC v. City of Pigeon Forge, Tennessee*, 4 F.4th 380, 390 (6th Cir. 2021). A circuit may otherwise consider overruling its own precedent only when sitting en banc. To determine when the en banc court should overrule a published panel decision, Federal Rule of Appellate Procedure 35(b)(1) and 6th Cir. I.O.P. 35(a) offer guideposts, including, for example, whether the decision has created a circuit split or whether the decision conflicts with other decisions from the Sixth Circuit or from the Supreme Court.

6. In your view, is it ever appropriate for a judge to ignore, disregard, refuse to implement, or issue an order that is contrary to an order from a higher court? Please explain.

Response: It is never appropriate for a court of appeals judge to depart from directly controlling Supreme Court precedent or a Supreme Court order in a case. *See Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477, 484 (1989). Article VI of the U.S. Constitution likewise directs that "the Judges in every State" are "bound" by the U.S. "Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States." U.S. Const., art. VI.

7. In *United States v. Virginia*, 518 U.S. 515, 536 (1996), the Court explained that in 1839, when the Virginia Military Institute was established, "[h]igher education at the time was considered dangerous for women," a view widely rejected today. In *Obergefell v. Hodges*, 576 U.S. 644, 668 (2015), the Court reasoned, "As all parties agree, many same-sex couples provide loving and nurturing homes to their children, whether biological or adopted. And hundreds of thousands of children are presently being raised by such

couples. . . . Excluding same-sex couples from marriage thus conflicts with a central premise of the right to marry. Without the recognition, stability, and predictability marriage offers, their children suffer the stigma of knowing their families are somehow lesser." This conclusion rejects arguments made by campaigns to prohibit same-sex marriage based on the purported negative impact of such marriages on children.

a. When is it appropriate for a court to consider evidence that sheds light on our changing understanding of society?

Response: If confirmed, I would faithfully apply any relevant precedents of the Supreme Court and the Sixth Circuit governing the consideration of such evidence.

b. What is the role of sociology, scientific evidence, and data in judicial analysis?

Response: If confirmed, I would faithfully apply any relevant precedents of the Supreme Court and the Sixth Circuit governing the consideration of such evidence. The admissibility of scientific, technical, or other specialized knowledge in the determination of adjudicative facts is governed by Federal Rule of Evidence 702 and the applicable precedent construing that rule, among other standards. Please see also my answer to Question 25.c for a discussion of the standards that generally govern judicial assessment of scientific evidence under the Administrative Procedure Act.

8. What is the remedy if the President violates his constitutional duty to faithfully execute the laws?

Response: As a nominee to a U.S. Court of Appeals, I do not think that it would be appropriate for me to address the potential remedies in an abstract hypothetical scenario.

9. Is President Trump eligible to be elected President for a third term?

Response: No. *See* U.S. Const., amend. XXII ("No person shall be elected to the office of the President more than twice….").

10. Who won the 2020 U.S. Presidential Election?

Response: President Biden was certified as the winner of the 2020 presidential election and served as the 46th President of the United States. To the extent this question seeks to elicit an answer that could be taken as opining on the broader political or policy debate regarding the conduct of the 2020 presidential election or on statements by any political figure, my response, consistent with the position of prior judicial nominees when asked questions regarding the 2020 election, is that it would be improper to offer any such comment as a judicial nominee. *See* Code of Conduct of U.S. Judges, Canons 3(A)(6), 5.

11. Would it be constitutional for the President of the United States to punish a private person for a viewpoint that person expresses in a newspaper op-ed?

Response: If expression does not otherwise fall into a category of speech excluded from constitutional protection, the First Amendment generally limits the government's ability to regulate the expression based on the viewpoint it expresses. As a nominee, I do not think that it would be appropriate for me to address how legal rules might apply in an abstract hypothetical scenario.

12. Would it be constitutional for the President of the United States to terminate government contracts with a private person specifically because that person donated to members of the opposite political party?

Response: Please see my answer to Question 11.

13. Would it ever be appropriate for the President of the United States to punish a law firm for taking on a client that the President did not like?

Response: Under professional rules of practice, attorneys are ethically charged to zealously represent their clients even if politically unpopular. *See* Tenn. Rules of Professional Conduct, cmt. 1 to Rule 1.3. At the same time, there are many laws, rules, and ethical obligations that apply to attorneys when they are practicing or pursuing the course of a representation. As a judicial nominee, I do not think that it would be appropriate for me to address how legal rules might apply in an abstract hypothetical scenario. Nor would doing so be appropriate given that related issues are the subject of ongoing litigation.

14. Do you agree that there is a constitutional right to privacy that protects a woman's right to use contraceptives? If you do not agree, please explain whether this right is protected or not and which constitutional rights or provisions encompass it.

Response: The Supreme Court has extended constitutional protection to the use of contraceptives. *See Eisenstadt v. Baird*, 405 U.S. 438, 453-54 (1972); *Griswold v. Connecticut*, 381 U.S. 479, 485 (1965). I would faithfully apply those and all other binding precedents of the Supreme Court.

15. Do you agree that there is a constitutional right to privacy that protects the right to in vitro fertilization (IVF)? If you do not agree, please explain whether this right is protected or not and which constitutional rights or provisions encompass it.

Response: As the preceding answer indicates, the Supreme Court has recognized a constitutional right to privacy in certain contexts. Whether that right extends to IVF has been the subject of litigation. As a nominee to a U.S. Court of Appeals, I do not think that it would be appropriate for me to opine on matters that may be "pending or impending in any court." *See* Code of Conduct of U.S. Judges, Canon 3A(6).

16. Do you believe that immigrants, regardless of legal status, are entitled to due process and fair adjudication of their claims?

Response: Judges are to adjudicate all claims fairly, regardless of the identity of the party. *See* 28 U.S.C. § 453. As for due process, the Fifth and Fourteenth Amendments to the U.S. Constitution provide, respectively, that no person shall "be deprived of life, liberty or property, without due process of law" and that no State shall "deprive any person of life, liberty, or property, without due process of law." U.S. Const., amends. V, XIV. The Supreme Court has stated that "the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). The Supreme Court further has an extensive body of precedents discussing what due process requires in various contexts. If I am confirmed, I would faithfully apply the relevant precedents of the Supreme Court and the Sixth Circuit in addressing due-process claims. To the extent this question asks about hypothetical cases or matters that are the subject of ongoing litigation, it would be improper for me as a judicial nominee to comment further.

17. Does the public's original understanding of the scope of a constitutional provision constrain its application decades later?

Response: From the perspective of a circuit nominee, I would look to the applicable Supreme Court precedent to determine the general manner in which to approach a specific legal issue. In some areas, such as the Confrontation Clause, the Supreme Court has treated originalist principles as highly important. *See, e.g.*, *Crawford v. Washington*, 541 U.S. 36 (2004). In other areas, such as the Eighth Amendment, the Supreme Court has adopted more of an evolving-standards approach. *See, e.g.*, *Roper v. Simmons*, 543 U.S. 551 (2005).

18. What sources would you employ to discern the contours of a constitutional provision?

Response: Please see my answer to Question 17.

19. What role does morality play in determining whether a challenged law or regulation is unconstitutional or otherwise illegal?

Response: Judges' proper role in our constitutional system is to evaluate legal claims and to determine the merits of those claims based on arguments presented by the parties, in light of applicable law, including the binding precedents of the Supreme Court and the text of the statute, regulation, or constitutional provision involved. They should not decide cases based on their personal views regarding morality or policy preferences. Judges are not policymakers; they have limited judicial authority. Abiding that role is essential to maintaining public confidence in the rule of law.

20. What role, if any, should the practical consequences of a particular ruling play in a judge's rendering of a decision?

Response: In certain contexts, such as in assessing the propriety and scope of injunctive relief, a court's application of the relevant legal standards requires consideration of the practical consequences of a particular order on the parties and the public. *See, e.g.*, *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Outside of those contexts, though, a court must apply the relevant legal standards faithfully and impartially, even if he or she might think that the practical consequences of following the law are undesirable as a policy matter.

21. What role, if any, should empathy play in a judge's decision-making process?

Response: Judges' proper role in our constitutional system is to evaluate legal claims and to determine the merits of those claims based on arguments presented by the parties, in light of applicable law, including the binding precedents of the Supreme Court and the text of the statute, regulation, or constitutional provision involved. They should not decide cases based on their personal views or on their preference for one party. *Cf.* 28 U.S.C. § 453. But judges should keep in mind that their decisions have real-world effect, and endeavor to reach and explain their decisions in ways fairly reasoned, grounded in the law, and readily accessible to the parties and the public.

22. What role, if any, should a judge's personal life experience play in his or her decision-making process?

Response: A judge's life experiences will hopefully have prepared the judge to undertake the duties of the office with understanding, courteousness, courage, diligence, integrity, and impartiality.

23. Should you be confirmed, would you ever inform parties before you that they do not need to comply with your orders?

Response: There are procedural mechanisms by which judges may stay or defer a party's obligation to comply with a judicial order. *See, e.g.*, Fed. R. Civ. P. 62. As a judicial nominee, it would not be appropriate for me to opine on those or other abstract legal issues that might apply in a hypothetical case.

a. Under what circumstances would you tell a party they could decide not to comply with your orders?

Response: Please see my preceding answer.

b. What would you do if a party refuses to comply with one of your orders?

Response: Please see my answer to Question 23, preface.

24. Under 28 U.S.C. § 455, "[a]ny justice, judge, or magistrate judge of the United States shall disqualify [themself] in any proceeding in which [their] impartiality might reasonably be questioned."

a. In your role as Director of Strategic Litigation in the Tennessee Attorney General's Office, you are counsel in the case *U.S. v. Skrmetti*, defending a state law that prohibits the provision of certain gender-affirming care, including hormonal therapy and surgeries, to minors. After the Supreme Court granted the United States' petition for certiorari, you served as a co-lead drafter of Tennessee's response merits brief. You also served as a second-chair attorney at the oral argument at the Supreme Court. Should you be confirmed, would you recuse yourself from future cases involving gender-affirming care? Why or why not?

Response: I believe that both the appearance of impartiality and actual impartiality are important in maintaining public confidence in our system of justice. All former litigators have a record of previous advocacy positions, and it is incumbent upon every judge to put aside his or her personal beliefs, previous clients, and prior positions and apply the law fairly and faithfully. Consistent with the Canon of Judicial Conduct and 28 U.S.C. § 455(b)(3)'s specific provision that applies to government attorneys, I would recuse from any particular proceeding or case in which I participated as counsel or provided advice. Otherwise, I will address all actual or potential conflicts of interest by reference to 28 U.S.C. § 455, the Code of Conduct for United States Judges, and any and all other laws, rules, and practices governing such circumstances.

b. You were counsel of record in the case *Miguel Cardona, et al. v. State of Tennessee, et al*, arguing on behalf of the state. You argued that Title IX—which prohibits sex-based discrimination in educational programs receiving federal financial assistance—should not protect individuals against discrimination based on gender identity. Should you be confirmed, would you recuse yourself from future cases considering whether gender identity falls under sex-based discrimination? Why or why not?

Response: Please see my answer to Question 24.a.

c. This year, you also submitted a brief to the Supreme Court in *Trump v. CASA*, opposing birthright citizenship and universal injunctions. Should you be confirmed, would you recuse yourself from future cases considering birthright citizenship? Why or why not?

Response: Please see my answer to Question 24.a.

d. Should you be confirmed, would you recuse yourself from cases pertaining to the validity of universal injunctions? Why or why not?

Response: Please see my answer to Question 24.a.

25. In March 2024, you testified at a House Financial Services Committee field hearing, criticizing the SEC for promulging a mandate requiring climate risk disclosures by public companies. In your testimony, you referred to a "climate agenda." Can you please explain what that phrase means?

Response: To the best of my recollection, I was referring to climate-related agreements and pledges—like Climate Action 100+ and The Net Zero Asset Managers initiative—signed by various financial-industry participants and other entities, *see, e.g.*, Office of the Tenn. Att'y Gen. & Reporter, *Attorney General Jonathan Skrmetti Announces Landmark Settlement with BlackRock, Inc. Regarding ESG Practices* (Jan. 17, 2025, 10:50 am), https://tinyurl.com/m4rd9zxy, as well as other "whole of government" directives regarding the promotion of climate-related priorities across federal agencies.

a. Do you believe that human activity has contributed to climate change?

Response: The Supreme Court has described "climate change" as a "controversial subject[]" and "sensitive political topic[]." *Janus v. AFSCME, Council*, 585 U.S. 878, 913-14 (2018). It would be inappropriate for me as a judicial nominee to opine on this or any other subject of political controversy. If I were to receive a case that involves environmental regulation or policies, I would carefully review the parties' briefs, the record, and apply the relevant laws to the facts before me; any personal beliefs regarding climate change would not be relevant to the disposition of the case.

b. If not, do you think climate fluctuations are entirely attributable to natural weather cycles?

Response: See my answer to Question 25.a.

c. When is it appropriate, if ever, for the court to substitute its judgment on the veracity of science used by agencies?

Response: Generally, under the Administrative Procedure Act, an agency "must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made." *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). The Supreme Court has instructed that the "scope of review" under that standard is "narrow," and that "[n]ormally, an agency rule would be arbitrary and capricious," and thus subject to judicial invalidation, "if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Id.* As a judicial nominee, it would be inappropriate for me to

opine on how that standard might apply to an agency's scientific judgment or evidence in a hypothetical case.

26. When is it appropriate for an en banc federal appellate court to reconsider a panel decision?

Response: Please see my answer to Question 5 (citing Fed. R. App. P. 35(b)).

27. Discuss your proposed hiring process for law clerks.

Response: Out of respect for the Senate's pending consideration of my nomination, I have not yet generated a proposed hiring process for law clerks. Generally, I would seek to evaluate clerks based upon their entire applications, recommendations, and supporting materials and my assessment of who would be the best fit for the job, understand the proper role of a law clerk in our judicial system, and get along well with other law clerks and members of chambers.

a. Do you think law clerks should be protected by Title VII of the Civil Rights Act?

Response: I do not believe that it would be appropriate for me, as a judicial nominee, to address policy questions relating to whether to amend Title VII's existing exemption for the federal judiciary. If confirmed, I will endeavor to ensure that discrimination has no place in my chambers.

Questions for the Record for Ms. Whitney D. Hermandorfer
Submitted by Senator Richard Blumenthal
June 11, 2025

1. **Throughout your time in the Office of the Tennessee Attorney General, you have taken a variety of extreme positions.**

   You defended Tennessee's near-total abortion ban. This law—which fails to include exceptions for rape or incest—is an outlier even amongst the slate of highly restrictive anti-choice state laws.

   You authored an amicus curiae brief in support of President Trump's bid to end birthright citizenship, despite the Supreme Court having considered and ruled on the issue over 120 years ago.

   You helped litigate a challenge to the ATF's final rule reclassifying pistols equipped with stabilizing braces as short-barreled rifles. This rule didn't ban these guns, it just required they be regulated like short-barreled rifles, which are particularly dangerous due to their combination of easily concealed size and deadly accuracy.

   You have pushed back against charges of racial gerrymandering in Tennessee's voting districts, threatening to undo decades of hard-fought progress in extending the right to vote to millions of Americans.

   You have taken extreme legal positions, far outside the mainstream, and made a career of championing them.

   a. **Given the highly political and ideological nature of your legal career, how can litigants who were to appear before you have any expectation of you being an unbiased jurist?**

      Response: I respectfully disagree with the characterization of the prior legal positions I have advanced as an advocate. In case examples given above in addition to many others, courts have adopted or agreed with legal positions I advanced as an attorney representing the State of Tennessee. *See, e.g.*, *Blackmon v. State of Tennessee*, 23-1196-I (Davidson Cnty. Chancery Ct. 2024) (granting motion to dismiss challenge to abortion statute in part); *Firearms Regul. Accountability Coal., Inc. v. Garland*, 112 F.4th 507 (8th Cir. 2024) (holding that cited ATF pistol-brace rule was likely unlawful); *Tenn. State Conf. of NAACP v. Lee*, 746 F. Supp. 3d 473 (M.D. Tenn. 2024) (dismissing cited challenge to electoral maps). And I have litigated a wide variety of matters representing a wide range of clients. As a judge, I would be called on not to advocate for any particular cause or party but instead to interpret and apply the law neutrally. I understand the distinct roles of advocates and judges and have been called upon, in the course of my clerkships and representations, to advance legal positions even when contrary to my personal policy preferences. I would do the same if I

were fortunate enough to be confirmed as a judge. I am proud of the support I've received from attorneys of a variety of political and ideological leanings, who have spoken to my reputation for fairness, analytical rigor, and affording my colleagues and opposing counsel respect.

2. **The House Republican-authored budget reconciliation bill currently pending in the Senate includes a provision that would limit federal judges' ability to hold government officials in contempt. The bill would prohibit federal courts from issuing contempt penalties against officials who disobey preliminary injunctions or temporary restraining orders if the party seeking the order did not provide financial security to cover potential future damages for wrongful enjoining.**

   The contempt power was first codified in law in the Judiciary Act of 1789. In 1873, the Supreme Court described it as "inherent in all courts" and "essential to the preservation of order in judicial proceedings and to the enforcement of the judgements, orders, and writs of the courts, and consequently to the due administration of justice." Yet House Republicans are seeking to exempt government officials from this key enforcement tool.

   a. **Do you believe the contempt power is "essential . . . to the due administration of justice[?]"**

      Response: The Supreme Court has long described it in that way. *See, e.g.*, *Bessette v. W.B. Conkey Co.*, 194 U.S. 324, 326-27 (1904).

   b. **Do you believe that federal judges should be limited in their ability to hold government officials in contempt?**

      Response: As the Supreme Court has explained, courts have "embraced an inherent contempt authority as a power 'necessary to the exercise of all others.'" *Int'l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 831-32 (1994) (quoting *United States v. Hudson*, 7 Cranch 32, 34 (1812)). Yet the Court has deemed "the contempt power" as something that "uniquely is 'liable to abuse.'" *Id.* at 831 (quoting *Bloom v. Illinois*, 391 U.S. 194, 202 (1968)). "Unlike most areas of law, where a legislature defines both the sanctionable conduct and the penalty to be imposed, civil contempt proceedings leave the offended judge solely responsible for identifying, prosecuting, adjudicating, and sanctioning the contumacious conduct." *Id.* That "fusion of legislative, executive, and judicial powers," the Supreme Court precedent teaches, risks "the prospect of 'the most tyrannical licentiousness.'" *Id.* (quoting *Young v. United States ex rel. Vuitton et Fils S.A.*, 481 U.S. 787, 822 (1987) (Scalia, J., concurring in judgment)). So too, "[c]ontumacy 'often strikes at the most vulnerable and human qualities of a judge's temperament.'" *Id.* (citation omitted). The Supreme Court has cautioned that the exercise of the contempt power is in short "a delicate one, and care is needed to avoid arbitrary or oppressive conclusions." *Bloom*, 391 U.S. at 202 (citation omitted).

I would follow all governing rules and precedents relating to the issue of judicial contempt orders should a case implicating the issue come before me as a judge. Otherwise, consistent with the Code of Conduct and positions taken by prior nominees, it would be inappropriate for me, as a pending judicial nominee, to comment on any subject of political controversy or to express a position regarding matters of public policy or any ongoing litigation.

3. If confirmed, you, like all other members of the federal bench, would have the ability to issue orders. On February 9, 2025, Vice President Vance posted on X that "[j]udges aren't allowed to control the executive's legitimate power." This raises an extremely concerning specter of executive defiance of court orders.

a. If confirmed, would you have the ability to issue orders?

Response: Yes.

i. Would you have the ability to enforce those orders?

Response: It is my understanding that federal courts typically seek to ensure compliance with court orders through sanctions, civil and criminal contempt procedures, as well as by requiring that parties file status reports and make court appearances to explain compliance efforts and progress.

ii. What powers would you have to enforce those orders?

Response: See previous answer.

b. Does there exist a legal basis for state executive officials to defy federal court orders? If so, what basis and in which circumstances?

Response: I have not had occasion to study these questions exhaustively; my general understanding of the relevant legal considerations is as follows. As it relates to the duty of state officials to follow federal law, the U.S. Constitution's Supremacy Clause directs that the U.S. Constitution, federal laws, and treaties "shall be the supreme Law of the Land … any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const., art. VI. If there is a lower court order that binds a party, including a state executive official, the normal course is for the party to follow the order and seek appellate review if the party disagrees with the outcome; if the Supreme Court issues an order upon the conclusion of appellate review, that order is to be followed. I am generally aware, however, that certain interlocutory orders might be immediately appealable only via the avenue of a contempt finding, which may require a party to act in a manner inconsistent with judicial orders. *See generally* 15B Charles Alan Wright & Arthur R. Miller, Fed. Prac. & Proc. Juris. (2d ed.) § 3914.23.1 Orders Prior to Trial—Review by Disobedience and Contempt. Because a case involving these

issues could come before me if I were confirmed as a judge, it would be inappropriate to hypothesize an exhaustive list of fact- and case-specific situations in which it might be legally appropriate for a state executive official to ignore or defy a court order. If any such issues came before me, I would commit to resolving them through the judicial process through careful consideration and application of the parties' arguments and the governing law and precedents.

c. Does there exist a legal basis for federal executive officials to defy federal court orders? If so, what basis and in which circumstances?

Response: I have not had occasion to study these questions exhaustively; my general understanding of the relevant legal considerations is as follows. If there is a lower court order that binds the Executive Branch or an executive official or agency, the normal course is for the party to follow the order and seek appellate review if the party disagrees with the outcome; if the Supreme Court issues an order upon the conclusion of appellate review, that order is to be followed. With respect to potential exceptions to that rule, I am aware of scholarly work that has posited scenarios in which parties, including the Executive Branch or one of its officers, departments, or agencies, might permissibly disregard a court order. *See generally, e.g.*, William Baude, *The Judgment Power*, 96 Geo. L.J. 1807 (2008) (lack of jurisdiction); Gary Lawson & Christopher D. Moore, *The Executive Power of Constitutional Interpretation*, 81 Iowa L. Rev. 1267, 1326 (1996) (constitutional error "so clear that it is not open to rational question"); *see also* 17 Corpus Juris Secundum Contempt §§ 56-65 (discussing contempt defenses). I am also aware of the legal distinction that parties and jurists have drawn between a court's binding "judgment[]" and its "statements in opinions." *Camreta v. Greene*, 563 U.S. 692, 704 (2011); *see* Abraham Lincoln, First Inaugural Address (Mar. 4, 1861) (discussing *Dred Scott v. Sanford*). And I am generally aware that certain interlocutory orders might be immediately appealable only via the avenue of a contempt finding. *See, e.g.*, *Mohawk Industries, Inc. v. Carpenter*, 558 U.S. 100, 111 (2009) ("Another long-recognized option is for a party to defy a disclosure order and incur court-imposed sanctions."). In *U.S. ex rel. Pogue v. Diabetes Treatment Centers of Am., Inc.*, the Sixth Circuit explained that the "general rule" is that a non-party "seeking to appeal a discovery order must first disobey the order and suffer a contempt citation." 444 F.3d 462, 471 (6th Cir. 2006) (citing *Alexander v. United States*, 201 U.S. 117, 121-22 (1906)). Because a case involving these issues could come before me if I were confirmed as a judge, it would be inappropriate to provide an answer that categorically pre-determines the validity of potential legal arguments for or against adhering to court orders. If any such issues came before me, I would commit to resolving them through the judicial process through careful consideration and application of the parties' arguments and the governing law and precedents.

d. What would make a court order unlawful?

Response: In broad strokes, a court order could be unlawful if the issuing court lacked jurisdiction or committed a reversible error when interpreting the law or adjudicating issues of fact.

i. **What is the process a party should follow if it believes a court order to be unlawful?**

Response: See answers to Questions 3.b-c.

ii. **Is it ever acceptable to not follow this process? When and why?**

Response: See answers to Questions 3.b-c.

4. **Were you in Washington, D.C. on January 6, 2021?**

Response: Yes.

a. **Were you inside the U.S. Capitol or on the U.S. Capitol grounds on January 6, 2021?**

Response: No.

Senator Mazie K. Hirono
Questions for the Record
Whitney D. Hermandorfer
Nominee to the U.S. Court of Appeals for the Sixth Circuit

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

    a. **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.

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

    Response: No.

2. **Federal district court judges have the power to issue court orders. If confirmed for this position, you will issue many such orders.**

    a. **As a federal district court judge, what tools would be at your disposal to ensure compliance with your court orders? Please list all such tools with which you are familiar.**

    Response: I have been nominated to a position as an appellate judge on the U.S. Court of Appeals for the Sixth Circuit. In that position, I would most often be reviewing orders issued by federal district court judges to ensure that they are consistent with the law in both scope and substance. It is my understanding that federal courts typically seek to ensure compliance with court orders through sanctions and civil and criminal contempt procedures, as well as by requiring that parties file status reports and make court appearances to explain compliance efforts and progress.

        i. **When should each of these tools be used?**

    Response: Whether and how to employ those or other enforcement and compliance procedures would turn on the governing law, applicable precedents, and the particular facts of a given case. If any such issues came before me, I would commit to resolving them through the judicial process through careful consideration and application of the parties' arguments and the governing law and precedents.

    b. **Is it ever permissible for a party in a case to disregard a court order?**

Response: I have not had occasion to study this issue exhaustively; my general understanding of the relevant legal considerations is as follows. If there is a lower court order that binds the Executive Branch or an executive official or agency, the normal course is for the bound party to follow the order and seek appellate review if the party disagrees with the outcome; if the Supreme Court issues an order upon the conclusion of appellate review, that order is to be followed. With respect to potential exceptions to that rule, I am aware of scholarly work that has posited scenarios in which parties, including the Executive Branch or one of its officers, departments, or agencies, might permissibly disregard a court order. *See generally, e.g.*, William Baude, *The Judgment Power*, 96 Geo. L.J. 1807 (2008) (lack of jurisdiction); Gary Lawson & Christopher D. Moore, *The Executive Power of Constitutional Interpretation*, 81 Iowa L. Rev. 1267, 1326 (1996) (constitutional error "so clear that it is not open to rational question"); *see also* 17 Corpus Juris Secundum Contempt §§ 56-65 (discussing contempt defenses). I am also aware of the legal distinction that parties and jurists have drawn between a court's binding "judgment[]" and its "statements in opinions." *Camreta v. Greene*, 563 U.S. 692, 704 (2011); *see* Abraham Lincoln, First Inaugural Address (Mar. 4, 1861) (discussing *Dred Scott v. Sanford*). And I am generally aware that certain interlocutory orders might be immediately appealable only via the avenue of a contempt finding. *See, e.g.*, *Mohawk Industries, Inc. v. Carpenter*, 558 U.S. 100, 111 (2009) ("Another long-recognized option is for a party to defy a disclosure order and incur court-imposed sanctions."). In *U.S. ex rel. Pogue v. Diabetes Treatment Centers of Am., Inc.*, the Sixth Circuit explained that the "general rule" is that a non-party "seeking to appeal a discovery order must first disobey the order and suffer a contempt citation." 444 F.3d 462, 471 (6th Cir. 2006) (citing *Alexander v. United States*, 201 U.S. 117, 121-22 (1906)). Because a case involving these issues could come before me if I were confirmed as a judge, it would be inappropriate to provide an answer that categorically pre-determines the validity of potential legal arguments for or against adhering to court orders. If any such issues came before me, I would commit to resolving them through the judicial process through careful consideration and application of the parties' arguments and the governing law and precedents.

i. How should a federal judge respond if a party disregards an order issued by the judge?

Response: See answer to Question 2.a.

ii. Is the President of the United States allowed to disregard a court order?

Response: See answer to Question 2.b.

iii. Would the response(s) outlined in response to question (i) be appropriate if the President disregarded a court order? Why or why not?

Response: See answer to Question 2.a.i, with the additional note that the Supreme Court has recently instructed that judicial orders "should" give

"due regard to the deference owed to the Executive Branch in the conduct of foreign affairs." *Noem v. Abrego Garcia*, 145 S. Ct. 1017, 1018 (2025).

c. What does it mean for a judge to hold a party in contempt of court?

Response: I understand this concept to refer to the situation in which a judge issues (i) a civil contempt order that seeks to coerce compliance with a court order through the imposition of penalties like fines or jail time that cease when a party complies with the order, or (ii) a criminal contempt order that punishes a party with a fixed fine or sentence for the party's prior disobedience or actions that harm or obstruct the judicial process. I also generally understand that distinct hearings and procedures apply to each category of contempt.

i. Do federal judges have the authority to hold the federal government in contempt of court?

Response: I have not studied in detail the legal standards or procedures for holding the federal government in contempt, or for issuing other sanctions in cases involving the federal government. As a judicial nominee, it would be inappropriate for me to opine on those issues, which are the subject of active litigation and could come before me were I confirmed as a judge. I would resolve any related questions through the judicial process and careful consideration and application of the parties' arguments and the governing law and precedents.

1. If so, where does that authority come from?

See answer to Question 2.c.i.

2. If not, why not?

I am generally aware that the Department of Justice has sometimes successfully invoked federal sovereign immunity in response to contempt proceedings. *See, e.g.*, N. Parrillo, *The Endgame of Administrative Law: Governmental Disobedience and the Judicial Contempt Power*, 131 Harv. L. Rev. 685, 697, 704 (2018). Otherwise, see answer to Question 2.c.i.

ii. What tools does a judge possess to punish contumacious conduct?

Response: See answer to Question 2.a. In addition, the Supreme Court has sometimes upheld the imposition of monetary and other litigation-related sanctions. *See, e.g.*, *Chambers v. NASCO, Inc.*, 501 U.S. 32 (1991).

1. Do those tools apply when the federal government or individual federal officers or employees are held in contempt?

Response: See answer to Question 2.c.i.

2. If not, why not?

Response: See answers to Questions 2.c.i and 2.c.i.2.

3. In your nominations hearing, when asked about court orders, you stated, "If there is a judgment issued by the court as to the parties, that absolutely binds the parties, and the way to go about your business if you disagree with an order is to seek maybe a stay or emergency relief or appellate review."

   a. If a party seeks such relief and a federal court still rules against them, must they comply with the court order?

   Response: Yes, that is my understanding of the relevant legal principles that generally apply; for additional explanation, see answer to Question 2.b.

   b. What action should a federal judge take if, after losing the appeals process, a party to the case still refuses to comply with the court order?

   Response: The mechanism by which a judge may permissibly seek to exercise enforcement and compliance procedures would turn on the governing law, applicable precedents, and the particular facts of a given case. As a judicial nominee, it would not be appropriate for me to offer an opinion on abstract legal issues or hypotheticals.

4. In your nominations hearing, you stated, "If the Supreme Court issues an order at the end of the appellate review process, that order is to be followed as to the parties in the case."

   a. Does your statement include orders issued to the President of the United States?

   Response: Yes; *see also* answer to Question 2.b.

5. In March 2025, you submitted an amicus brief to the Supreme Court of the United States on behalf of the State of Tennessee in *Trump v. CASA*, the case regarding President Trump's Executive Order in which he tried to unconstitutionally end birthright citizenship. During your nominations hearing, you stated that "The brief did not take an ultimate position with regard to the merits of the executive order." Yet, on the front page of your amicus brief read the words, "In Support of Applicants." The applicant in this case is President Trump.

   a. How do you square these words on the front page of your amicus brief with your claim to have "not take[n] an ultimate position" in the case?

Response: The brief advanced a number of arguments, including with respect to the permissible scope of judicial relief, that would support the applicants if accepted.

6. In the aforementioned amicus brief, you asserted that the 14th Amendment of the United States Constitution "requires a more meaningful connection than mere presence by happenstance or illegality" in the United States for conferring birthright citizenship. The citizenship clause is the substantive topic addressed in President Trump's executive order.

   a. How do you square this argument with your claim to have "not take[n] an ultimate position" in the case?

   Response: The arguments advanced by the brief speak for themselves, and the best way to understand them is by reading the entire brief. The snippet this question presents omits important context, including the remainder of the sentence that certain historical sources "support" that position (Br. 2), the brief's note that it did not "purport to fully survey the complex historical record" (Br. 8), and the brief's conclusion that plaintiffs oversell the "open-and-shut" nature of their asserted reading (Br. 3).

7. **Is birthright citizenship guaranteed by the United States Constitution?**

   Response: Because this question asks about matters that are the subject of ongoing litigation, it would be improper for me as a judicial nominee to opine on it.

8. **Does the President have the power to unilaterally alter the Constitution?**

   Response: The only permitted process for amending the Constitution is set out in Article V, *see* U.S. Constitution, art. V.

9. In *Tennessee v. EEOC*, you led the State of Tennessee's effort to challenge the Equal Employment Opportunity Commission's April 2024 final rule regarding the implementation of the Pregnant Workers Fairness Act.

   a. Are pregnant workers entitled to reasonable workplace accommodations for limitations arising out of pregnancy or related medical conditions?

   Response: The Pregnant Workers Fairness Act sets out requirements that covered employers provide specified accommodations for certain limitations arising out of an employee's pregnancy, childbirth, or related medical conditions. In the legal action this question mentions, the State of Tennessee and its co-plaintiff States challenged limited portions of the EEOC's Pregnant Workers Fairness Act April 2024 Final Rule—namely, those portions that interpreted the phrase "pregnancy, childbirth, or related medical conditions" to require that States, as employers, provide affirmative workplace accommodations for women seeking non-medically related (or "elective") abortions in contravention of state law. A

district court presiding over a separate lawsuit recently deemed those portions of the April 2024 Final Rule unlawful. *See Louisiana v. EEOC*, No. 2:24-cv-629, 2025 WL 1462583 (W.D. La. May 21, 2025). As Tennessee's litigation is ongoing, it would be improper for me as a judicial nominee to opine further on it.

Nomination of Whitney D. Hermandorfer
Nominee to be U.S. Circuit Judge for the Sixth Circuit
Questions for the Record
Submitted June 11, 2025

QUESTIONS FROM SENATOR CORY A. BOOKER

1. If you are confirmed to the federal bench, you would be one of the least experienced federal court of appeals judges in the nation. Having graduated from law school in 2015, you have about 10 years of legal experience; of those 10 years, you have only six years of legal practice experience, excluding judicial clerkships.

   a. If you are confirmed, what concrete and affirmative steps do you plan to take to try to overcome the relative experience gap between you and your colleagues?

   Response: I am proud of the extensive record of litigation I have built over my years of practice. That record involves serving as counsel, often in lead roles and on behalf of multi-State coalitions, in several dozen federal cases spanning the Nation's federal trial and appellate courts, as well as the U.S. Supreme Court. These cases have often proceeded on fast-paced timelines and involved highly complex and nationally significant matters of federal law. If I am fortunate enough to be confirmed, I would approach the job as I have any other new task or position over the course of my life—while approaching the honor of the judicial office with humility and deference to my colleagues, I would work as hard as needed to carry out the required duties and contribute as quickly as I can to the work of the court. I'd also take advantage of training opportunities, particularly in areas of practice to which I've had less routine exposure in my career, and seek out the guidance and advice of my judicial colleagues on the Sixth Circuit and other federal courts.

2. The American Bar Association (ABA) Standing Committee on the Federal Judiciary has conducted extensive peer evaluations of the professional qualifications of a president's nominees to become federal judges for seven decades. This practice has endured through 18 presidential administrations, under Republican and Democratic presidents.

   On May 29, 2025, Attorney General Pam Bondi ended this longstanding practice when she informed the ABA that, "[T]he Office of Legal Policy will no longer direct nominees to provide waivers allowing the ABA access to nonpublic information, including bar records. Nominees will also not respond to questionnaires prepared by the ABA and will not sit for interviews with the ABA."[1]

   a. Do you agree with AG Bondi that "the ABA no longer functions as a fair arbiter of nominees' qualifications and its ratings invariably and demonstrably favor nominees put forth by Democratic administrations"?

[1] Letter from Attorney General Pam Bondi to William R. Bay, President, American Bar Association (May 29, 2025), https://www.justice.gov/ag/media/1402156/dl?inline.

Response: It would be inappropriate for me, as a judicial nominee, to opine on the statements of any political figure or on any subject of political controversy.

b. How many years of legal experience in the practice of law does the ABA recommend a federal judicial nominee have prior to their nomination?

Response: I understand that the ABA "believes that a nominee to the federal bench ordinarily should have at least twelve years' experience in the practice of law," and claims that it weighs that view among a number of other factors when assessing the qualifications of nominees.

3. In his Truth Social post announcing your nomination, President Trump wrote, "Whitney is a Fighter who will inspire confidence in our Legal System."[2]

a. If you are confirmed to the federal bench, how do you plan to inspire confidence in our legal system?

Response: If confirmed, I would endeavor to faithfully and fully carry out the Article III duties of judges on what the Constitution terms an "inferior" court to the "one [S]upreme Court." U.S. Const., art. III. Further, I would be bound to follow other oaths and obligations in exercising the Article III "judicial Power," including the oath of judges set out in 28 U.S.C. § 453 and the Canons of Judicial Conduct. Under those authorities, court of appeals judges are charged with neutrally and impartially applying all precedents of the Supreme Court and governing circuit precedent, as well as any other applicable laws or rules of decision that apply to Article III judges or legal cases and controversies. Judges are bound to apply the law fairly and impartially, even when the result reached in doing so does not align with their policy preferences.

b. Do you currently have confidence in the legal system? Why or why not?

Response: "The U.S. legal system is the envy of the world." *In re Cattell*, 2025 WL 1319149, at *3 (Lee, J., concurring). If confirmed, I would devote myself to executing my duties consistent with the obligations set out in the preceding answer and in a way that honors the judicial office and our constitutional system.

c. What would inspire confidence in the legal system for you?

Response: Following the judicial process—receiving briefing, hearing oral argument, and engaging in deliberation—is critical to allowing judges to engage in deliberate decision-making and to promoting confidence in the judiciary. I also believe confidence is furthered by judges' endeavoring to reach and explain their decisions in ways fairly reasoned, grounded in the law and the limits on their authority, and readily accessible to the parties and the public.

[2] Donald J. Trump (@real Donald Trump), TRUTH SOCIAL (May 1, 2025, 11:42 PM), https://truthsocial.com/@realDonaldTrump/posts/114436168298983317.

4. **Do you agree with President Trump that Leonard Leo of the Federalist Society is "a real 'sleazebag'" and "a bad person who, in his own way, probably hates America"?[3]**

   Response: Consistent with the Code of Judicial Conduct and positions taken by prior nominees, it would be inappropriate for me, as a pending judicial nominee, to comment on the statements of any political figure or on any subject of political controversy.

5. On March 18, 2024, you testified before the House Financial Services Subcommittee on Oversight and Investigations at a field hearing in Tennessee relating to the impact of the Securities and Exchange Commission's (SEC) climate disclosure rule.

   a. **During the hearing, you referred multiple times to a "climate agenda." Please explain what that term means and what you were referring to in the context of that hearing.**

      Response: To the best of my recollection, I was referring to climate-related agreements and pledges—like Climate Action 100+ and The Net Zero Asset Managers initiative—signed by various financial-industry participants and other entities, *see, e.g.*, Office of the Tenn. Att'y Gen. & Reporter, *Attorney General Jonathan Skrmetti Announces Landmark Settlement with BlackRock, Inc. Regarding ESG Practices* (Jan. 17, 2025, 10:50 am), https://tinyurl.com/m4rd9zxy, as well as other "whole of government" directives regarding the promotion of climate-related priorities across federal agencies.

6. During your nomination hearing, you referred to Alexander Hamilton's *Federalist 78*, stating that a judge should not substitute his or her passion or policy preference for the will of the people.

   a. **If you are confirmed to the federal bench, how will you determine the will of the people?**

      Response: The Supreme Court has referred to the "democratic process" of lawmaking by elected officials as producing laws "embodying the will of the people." *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 451 (2008).

7. In your Senate Judiciary Questionnaire, you reported that you have been a member of Teneo, or the Teneo Network.

   a. **Please describe what Teneo is.**

[3] Donald J. Trump (@real Donald Trump), TRUTH SOCIAL (May 29, 2025, 08:10 PM), https://truthsocial.com/@realDonaldTrump/posts/114593880455063168.

Response: I understand the Teneo Network to be a group of conservative professionals from various sectors who periodically participate in educational, social, and networking events.

b. What is Teneo's mission?

Response: I understand the Teneo Network's mission as facilitating the events listed in my previous answer.

c. How did you become a member of Teneo?

Response: I was invited to join upon the recommendation of colleagues.

d. Have you recruited others to join Teneo? If yes, provide the names of those individuals.

Response: No.

e. Please provide a list of all events you have attended as a member of Teneo. Provide dates and locations for all events listed and describe the purpose of the event.

Response: In mid-April, prior to my nomination, I attended one networking event at a local restaurant.

f. Have you (or, if applicable, your spouse) made financial contributions to Teneo? If yes, please provide the amounts and dates of such contributions.

Response: No.

8. **How would you characterize your judicial philosophy?**

Response: If confirmed, my philosophy would be to faithfully and fully carry out the Article III duties of judges on what the Constitution terms an "inferior" court to the "one [S]upreme Court." U.S. Const., art. III. Further, I would be bound to follow other oaths and obligations in exercising the Article III "judicial Power," including the oath of judges set out in 28 U.S.C. § 453 and the Canons of Judicial Conduct. Under those authorities, court of appeals judges are charged with neutrally and impartially applying all precedents of the Supreme Court and governing circuit precedent, as well as any other applicable laws or rules of decision that apply to Article III judges or legal cases and controversies. Judges are bound to apply the law fairly and impartially, even when the result reached in doing so does not align with their policy preferences.

9. **Do you consider yourself an originalist? If so, what do you understand originalism to mean?**

Response: I understand originalism to refer to a method of constitutional interpretation that requires a judge to apply his or her best understanding of the original public meaning of a constitutional provision when adjudicating cases and controversies. In interpreting the Constitution if confirmed, I would employ methodologies consistent with the methods of interpretation that the Supreme Court employs when it undertakes to interpret constitutional provisions. The Court has routinely interpreted various constitutional provisions by attempting to discern the original meaning of the words used as understood by the public at the time of the Founding. *See, e.g.*, *District of Columbia v. Heller*, 554 U.S. 570 (2008); *Crawford v. Washington*, 541 U.S. 36 (2004); *Wilson v. Arkansas*, 514 U.S. 927 (1995).

10. **Do you consider yourself a textualist? If so, what do you understand textualism to mean?**

Response: I understand textualism to call for a judge to interpret the text as it was written, assigning the meaning it had at the time of its enactment. Context surrounding a law's passage can be probative to a textualist to the extent that context sheds light on the original public meaning of the statutory text. In approaching statutory interpretation, I would follow the methodological instructions of the Supreme Court. The Supreme Court has often instructed that the best meaning of statutory text, as assessed by the time of enactment, is generally entitled to controlling weight. That is the approach I would follow, along with any other relevant instructions.

11. Legislative history refers to the record Congress produces during the process of passing a bill into law, such as detailed reports by congressional committees about a pending bill or statements by key congressional leaders while a law was being drafted. The basic idea is that by consulting these documents, a judge can get a clearer view about Congress's intent. Some federal judges consider legislative history when analyzing the meaning of a statute.

    a. If you are confirmed to serve on the federal bench, would you consult and cite legislative history to analyze or interpret a federal statute?

    Response: Reliance on legislative history is unnecessary when a statute's language is unambiguous. *Mohamad v. Palestinian Authority*, 566 U.S. 449, 458 (2012); *see also Whitfield v. United States*, 543 U.S. 209, 215 (2005) (where the meaning of statutory text "is plain and unambiguous, we need not accept [a party's] invitation to consider the legislative history"). To the extent that legislative history may be properly considered, it "is meant to clear up ambiguity, not create it." *Milner v. Dep't of Navy*, 562 U.S. 562, 574 (2011). If confirmed, I would faithfully apply all relevant precedent of the Supreme Court and the Sixth Circuit concerning the use of legislative history.

12. According to a Brookings Institution study, Black people and white people use drugs at similar rates, yet Black people are 3.6 times more likely to be arrested for selling drugs

and 2.5 times more likely to be arrested for possessing drugs than their white peers.[4] Notably, the same study found that whites are actually *more likely* than Black people to sell drugs.[5] This disparity still persists. Even though rates of illicit drug use do not substantially differ by race and ethnicity,[6] a 2023 study reports that one in four people arrested for drug law violations were Black, although Black people make up only 14 percent of the U.S. population.[7]

These statistics are reflected in our nation's prisons and jails. Black people are roughly five times more likely than white people to be incarcerated in state prisons.[8] In my home state of New Jersey, "the rate of imprisonment among Black people is more than nine times" that of white people.[9]

a. To what do you attribute the statistics above?

Response: The sources of those and other troubling disparities, and the best means to address them, continue to be a topic of public debate. It would therefore be inappropriate for me, as a judicial nominee, to comment further, other than to express the belief that it would be incumbent on me as a judge to be aware of the possibility of any and all types of bias and to endeavor to minimize them as consistent with my judicial duties.

13. **According to an academic study, Black men were 65 percent more likely than similarly-situated white men to be charged with federal offenses that carry harsh mandatory minimum sentences.[10] What do you attribute this to?**

Response: Please see my answer to Question 12.a.

14. **A recent report by the United States Sentencing Commission observed demographic differences in sentences imposed during the five-year period studied, with Black men receiving federal prison sentences that were 13.4 percent longer than white men.[11] What do you attribute this to?**

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[4] Jonathan Rothwell, *How the War on Drugs Damages Black Social Mobility*, BROOKINGS INST. (Sept. 30, 2014), https://www.brookings.edu/blog/social-mobility-memos/2014/09/30/how-the-war-on-drugs-damages-black-social-mobility.
[5] *Id.*
[6] SUBSTANCE ABUSE & MENTAL HEALTH SERVICES ADMINISTRATION, BEHAVIORAL HEALTH BY RACE AND ETHNICITY: RESULTS FROM THE 2021–2023 NATIONAL SURVEYS ON DRUG USE AND HEALTH 6 (2024).
[7] Nazgol Ghandnoosh, Ph.D. & Celeste Barry, *One in Five: Disparities in Crime and Policing*, THE SENTENCING PROJECT 18 (Nov. 2, 2023), https://www.sentencingproject.org/press-releases/new-report-on-racial-disparities-in-policing-and-crime-from-the-sentencing-project/.
[8] Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, SENTENCING PROJECT (Oct. 13, 2021), https://www.sentencingproject.org/app/uploads/2022/08/The-Color-of-Justice-Racial-and-Ethnic-Disparity-in-State-Prisons.pdf.
[9] *Id.* at 9.
[10] Sonja B. Starr & M. Marit Rehavi, *Racial Disparity in Federal Criminal Sentences*, 122 J. POL. ECON. 1320, 1323 (2014).
[11] U.S. SENTENCING COMM'N, DEMOGRAPHIC DIFFERENCES IN SENTENCING 2 (Nov. 2023), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2023/20231114_Demographic-Differences.pdf.

Response: Please see my answer to Question 12.a.

15. **What role do you think federal judges, who review difficult, complex criminal cases, can play in addressing implicit racial bias in our criminal justice system?**

Response: It is the obligation of all participants in the criminal justice system, especially judges, to be aware of the possibility of any and all types of bias and to endeavor to minimize them as consistent with their judicial duties.

16. **Do you believe it is valuable for America to have demographic diversity in the judicial branch? If not, please explain your views.**

Response: Yes, nobody should ever be excluded from the opportunity to serve as a judge based on race, ethnicity, sex, religion, or any other protected characteristic. My experience in law and life has commended the value of sharing experiences with persons of varying backgrounds, life experiences, and viewpoints. Being an effective lawyer depends upon one's ability to effectively intake, understand, and articulate a diverse range of methodological and legal viewpoints. If I am fortunate enough to be confirmed, I would look forward to learning from and building relationships with my colleagues on the Sixth Circuit and other courts.

17. **Would you honor the request of a plaintiff, defendant, or witness in a case before you who is transgender to be referred to in accordance with that person's gender identity?**

Response: I would treat and interact with all who may appear before me with dignity, respect, and fairness.

18. **Under what circumstances would it be acceptable for an executive branch official to ignore or defy a federal court order?**

Response: I have not had occasion to study these questions exhaustively; my general understanding of the relevant legal considerations is as follows. If there is a lower court order that binds the Executive Branch or an executive official or agency, the normal course is for the bound party to follow the order and seek appellate review if the party disagrees with the outcome; if the Supreme Court issues an order upon the conclusion of appellate review, that order is to be followed. With respect to potential exceptions to that rule, I am aware of scholarly work that has posited scenarios in which parties, including the Executive Branch or one of its officers, departments, or agencies, might permissibly disregard a court order. *See generally, e.g.*, William Baude, *The Judgment Power*, 96 Geo. L.J. 1807 (2008) (lack of jurisdiction); Gary Lawson & Christopher D. Moore, *The Executive Power of Constitutional Interpretation*, 81 Iowa L. Rev. 1267, 1326 (1996) (constitutional error "so clear that it is not open to rational question"); *see also* 17 Corpus Juris Secundum Contempt §§ 56-65 (discussing contempt defenses). I am also aware of the legal distinction that parties and jurists have drawn between a court's binding "judgment[]" and its "statements in opinions." *Camreta v. Greene*, 563 U.S. 692, 704

(2011); *see* Abraham Lincoln, First Inaugural Address (Mar. 4, 1861) (discussing *Dred Scott v. Sanford*). And I am generally aware that certain interlocutory orders might be immediately appealable only via the avenue of a contempt finding. *See, e.g.*, *Mohawk Industries, Inc. v. Carpenter*, 558 U.S. 100, 111 (2009) ("Another long-recognized option is for a party to defy a disclosure order and incur court-imposed sanctions."). In *U.S. ex rel. Pogue v. Diabetes Treatment Centers of Am., Inc.*, the Sixth Circuit explained that the "general rule" is that a non-party "seeking to appeal a discovery order must first disobey the order and suffer a contempt citation." 444 F.3d 462, 471 (6th Cir. 2006) (citing *Alexander v. United States*, 201 U.S. 117, 121-22 (1906)). Because a case involving these issues could come before me if I were confirmed as a judge, it would be inappropriate to provide an answer that categorically pre-determines the validity of potential legal arguments for or against adhering to court orders. If any such issues came before me, I would commit to resolving them through the judicial process through careful consideration and application of the parties' arguments and the governing law and precedents.

a. If an executive branch official ignores or defies a federal court order, what legal analysis would you employ if confirmed to the federal bench to determine whether that official should be held in contempt?

Response: If confirmed to a position as circuit judge, I would most often be reviewing orders issued by federal district court judges to ensure that they are consistent with the law in both scope and substance. It is my understanding that federal courts typically seek to ensure compliance with court orders through sanctions and civil and criminal contempt procedures, as well as by requiring that parties file status reports and make court appearances to explain compliance efforts and progress. The Supreme Court, for its part, has cautioned that "the contempt power" is something that "uniquely is 'liable to abuse,'" *Int'l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 831 (1994), and that "care is needed to avoid arbitrary or oppressive conclusions," *Bloom v. Illinois*, 391 U.S. 194, 202 (1968) (citation omitted). I would apply these instructions and any other governing law and precedents to assess whether any allegations of noncompliance were correct or whether any recognized defenses apply.

b. Is there any legal basis that would allow an executive branch official to ignore or defy temporary restraining orders and preliminary injunctions issued by federal district court judges?

Response: See previous two responses.

19. **Does the president have the power to ignore or nullify laws passed by Congress?**

Response: The Constitution gives the President the authority to veto legislation passed by Congress. Art. I, § 7, cl. 2. Additionally, the Take Care Clause in the U.S. Constitution directs that the President "shall take Care that the Laws be faithfully executed." U.S.

Const., art. II, § 3, cl. 5. The Supreme Court has cited the Take Care Clause as a source of the President's authority to engage in "enforcement of federal … laws passed by Congress," *Trump v. United States*, 603 U.S. 593, 627 (2024), including by "mak[ing] arrests and prosecut[ing] offenses on behalf of the United States," *United States v. Texas*, 599 U.S. 670, 678-79 (2023). The Supreme Court has further instructed that, under the Take Care Clause and the Vesting Clause, *see* Art. II, § 1, cl. 1, the Executive Branch possesses certain authority and discretion to prioritize enforcement of federal law. *See, e.g.*, *Texas*, 599 U.S. at 679; *Heckler v. Chaney*, 470 U.S. 821, 832 (1985). How these or any other legal principles apply to presidential action implicates issues that could arise before me as a judge; thus, as a judicial nominee, it would be inappropriate for me to provide further comment. *See* Code of Conduct of U.S. Judges, Canon 3A(6).

20. **Does the president have the power to withhold funds appropriated by Congress?**

Response: I am generally aware that the issue regarding the Executive Branch's withholding of authorized funds was addressed by the Supreme Court's decision in *Train v. City of New York*, 420 U.S. 35 (1975). I am also generally aware of the Impoundment Control Act of 1974, 2 U.S.C. § 681 *et seq.*, which provides various procedures for addressing budget and funding issues. As this question relates to an issue that is the subject of litigation in the courts, I do not think that it would be appropriate for me to opine further. *See* Code of Conduct of U.S. Judges, Canon 3A(6).

21. **Does the Supremacy Clause of the U.S. Constitution establish that federal laws supersede conflicting state laws?**

Response: The Supreme Court has interpreted the Clause to establish that principle, as well as provided instruction about what types of federal-state conflicts lead to preemption. *See, e.g.*, *Haaland v. Brackeen*, 599 U.S. 255, 287 (2023) (collecting cases).

a. The Emergency Medical Treatment and Labor Act (EMTALA) is a federal law enacted in 1986 that requires hospitals to provide emergency care, including emergency abortion care. Do you agree that EMTALA, as a federal law, supersedes conflicting state laws?

Response: The nature and scope of EMTALA's preemptive effect is a matter subject to ongoing litigation, so it would be improper for me as a judicial nominee to comment on this question.

22. **Does the Fifth Amendment of the U.S. Constitution apply to non-citizens present in the United States?**

Response: The Supreme Court has stated that "the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). The Supreme Court further has an extensive body of precedents discussing what due process requires in various contexts. The question in most cases is less about whether the

doctrine of due process applies and more about how much process is due. If I am confirmed, I would faithfully apply the relevant precedents of the Supreme Court and the Sixth Circuit in addressing due process claims. To the extent this question asks about hypothetical cases or matters that are the subject of ongoing litigation, it would be improper for me as a judicial nominee to comment further.

23. **Is it constitutional for Congress to delegate to federal agencies the power to implement statutes through rulemaking?**

Response: The Supreme Court has a body of precedents addressing the constitutional limits on legislative delegation of rulemaking authority. *See Gundy v. United States*, 588 U.S. 128, 135-36 (2019) (op. of Kagan, J.) (collecting cases). A case raising such issues, moreover, is presently before the U.S. Supreme Court. *See FCC v. Consumers' Rsch.* (U.S. No. 24-354) (argued Mar. 26, 2025). As a nominee to a U.S. Court of Appeals, I do not think that it would be appropriate for me to opine further on how these standards may apply, *see* Code of Conduct of U.S. Judges, Canon 3A(6), other than to commit that I will faithfully apply all applicable precedent of the Supreme Court and the Sixth Circuit on this topic.

24. **Was *Brown v. Board of Education*, 347 U.S. 483 (1954), correctly decided?**

Response: *Brown* is a landmark ruling that promotes racial equality and rejected the manifestly unjust and incorrect separate-but-equal rule of *Plessy v. Ferguson*, 163 U.S. 537 (1896). Consistent with the position of prior judicial nominees, I consider *Brown* to be one of the limited exceptions to the general principle, explained by Justice Kagan and others, that a judicial nominee generally should not "grade" or give a "thumbs-up or thumbs-down" to particular precedents of the Supreme Court. I agree with prior nominees that the underlying premise of the *Brown* decision—i.e., that "separate but equal is inherently unequal"—is beyond dispute, and that judges can express their agreement with that principle without calling into question their ability to apply the law faithfully to cases raising similar issues. Therefore, just as other nominees for judicial office have done, I can confirm that *Brown* was rightly decided consistent with the Code of Conduct.

25. **Is *Griswold v. Connecticut*, 381 U.S. 479 (1965), binding precedent? Please describe the facts and holding of this case.**

Response: In *Griswold*, the Supreme Court held that the Fourteenth Amendment protects the use of contraceptives. *Griswold* is binding precedent and I would faithfully follow it, and all other Supreme Court precedents, if confirmed to be a judge on the Sixth Circuit.

26. **Is *Lawrence v. Texas*, 539 U.S. 558 (2003), binding precedent? Please describe the facts and holding of this case.**

Response: In *Lawrence*, the Supreme Court held that laws that criminalized sexual intimacy between members of the same sex violate the Fourteenth Amendment.

Lawrence is binding precedent and I would faithfully follow it, and all other Supreme Court precedents, if confirmed to be a judge on the Sixth Circuit.

27. **Is *Obergefell v. Hodges*, 576 U.S. 644 (2015), binding precedent? Please describe the facts and holding of this case.**

    Response: In *Obergefell*, the Supreme Court held that the Fourteenth Amendment requires a state to license marriages between two people of the same sex on the same terms and conditions as marriages between two people of the opposite sex. *Obergefell* is binding precedent and I would faithfully follow it, and all other Supreme Court precedents, if confirmed to be a judge on the Sixth Circuit.

28. **Do you believe that President Trump won the 2020 election? Please describe the facts and holding of this case.**

    Response: President Biden was certified as the winner of the 2020 presidential election and served as the 46th President of the United States. To the extent this question seeks to elicit an answer that could be taken as opining on the broader political or policy debate regarding the conduct of the 2020 presidential election or on statements by any political figure, my response, consistent with the position of prior judicial nominees when asked questions regarding the 2020 election, is that it would be improper to offer any such comment as a judicial nominee. *See* Code of Conduct of U.S. Judges, Canons 3(A)(6), 5.

29. The 22nd Amendment says that "no person shall be elected to the office of the President more than twice."[12]

    a. **Do you agree that President Trump was elected to the office of the President in the 2016 election?**

       Response: Yes.

    b. **Do you agree that President Trump was elected to the office of the President in the 2024 election?**

       Response: Yes.

    c. **Do you agree that the 22nd Amendment, absent a constitutional amendment, prevents President Trump from running for a third presidential term?**

       Response: The text of the 22nd Amendment would prohibit any person from being "elected to the office of the President" for a third time. U.S. Const., amend. XXII.

30. **Has any official from the White House or the Department of Justice, or anyone else involved in your nomination or confirmation process, instructed or suggested that**

[12] U.S. CONST. amend. XXII.

you not opine on whether any past Supreme Court decisions were correctly decided?

Response: No.

31. **Have you spoken or corresponded with Elon Musk since November 2024? If yes, provide the dates, mode, and content of those discussions and communications.**

Response: No.

32. **Have you spoken or corresponded with any member of the Department of Government Efficiency (DOGE) since November 2024? If yes, identify the member(s) and provide the dates, mode, and content of those discussions and communications.**

Response: I have known James Burnham for several years since clerking together. As friends, we have periodically spoken since November 2024. I also once corresponded with him in his capacity at DOGE about a litigation-related matter in which I have involvement in my role at the Office of the Tennessee Attorney General and Reporter. To the best of my recollection, those conversations occurred by phone in March 2025.

33. **Have you spoken or corresponded with Stephen Miller since November 2024? If yes, provide the dates, mode, and content of those discussions and communications.**

Response: I met Stephen Miller in passing while awaiting entry into the Oval Office prior to my meeting with President Trump. Otherwise, no.

34. **Have you spoken or corresponded with Chad Mizelle since November 2024? If yes, provide the dates, mode, and content of those discussions and communications.**

Response: In December 2024, I spoke with Chad Mizelle regarding a matter in which I have involvement in my role at the Office of the Tennessee Attorney General and Reporter. To the best of my recollection, I also spoke with him briefly on February 13, 2025, when attending an event at Antonin Scalia Law School.

35. **Have you spoken or corresponded with Pam Bondi since November 2024? If yes, provide the dates, mode, and content of those discussions and communications.**

Response: To the best of my recollection, no.

36. **Have you spoken or corresponded with Todd Blanche since November 2024? If yes, provide the dates, mode, and content of those discussions and communications.**

Response: To the best of my recollection, no.

37. **Have you spoken or corresponded with Emil Bove since November 2024? If yes, provide the dates, mode, and content of those discussions and communications.**

Response: To the best of my recollection, no.

38. **Have you spoken or corresponded with Leonard Leo since November 2024? If yes, provide the dates, mode, and content of those discussions and communications.**

Response: To the best of my recollection, no.

39. **Have you—personally or through any of your affiliated companies or organizations, agents, or employees—provided financial support or other resources to any members of the Proud Boys or of the Oath Keepers for their legal fees or for other purposes? If yes, state the amount of financial support provided, dates provided, and for what purposes.**

Response: No.

40. **Have you ever spoken or corresponded with any of the following individuals? If yes, provide the dates, mode, and content of those discussions and communications.**

a. Enrique Tarrio
b. Stewart Rhodes
c. Kelly Meggs
d. Kenneth Harrelson
e. Thomas Caldwell
f. Jessica Watkins
g. Roberto Minuta
h. Edward Vallejo
i. David Moerschel
j. Joseph Hackett
k. Ethan Nordean
l. Joseph Biggs
m. Zachary Rehl
n. Dominic Pezzola
o. Jeremy Bertino
p. Julian Khater

Response: No as to all.

41. **Have you ever spoken or corresponded with any individuals convicted and later pardoned of offenses related to the January 6, 2021 attack on the U.S. Capitol? If yes, identify the individual(s) and provide the dates, mode, and content of those discussions and communications.**

Response: No.

42. **Have you ever been demoted, terminated, or experienced any other adverse employment action?**

Response: No.

a. If yes, please describe the events that led to the adverse employment action.

Response: Not applicable.

b. If no, please affirm that, since becoming a legal adult, you have left each place of employment voluntarily and not subject to the request or suggestion of any employer.

Response: Yes.

43. **Federal judges must file annual financial disclosure reports and periodic transaction reports. If you are confirmed to the federal bench, do you commit to filing these disclosures and to doing so on time?**

Response: Yes.

44. Article III Project (A3P) "defends constitutionalist judges and the rule of law." According to Mike Davis, Founder & President of A3P, "I started the Article III Project in 2019 after I helped Trump win the Gorsuch and Kavanaugh fights. We saw then how relentless—and evil—too many of today's Democrats have become. They're Marxists who hate America. They believe in censorship. They have politicized and weaponized our justice systems."[13]

a. Have you discussed any aspect of your nomination to the federal bench with any officials from or anyone directly associated with A3P, or did anyone do so on your behalf? If yes, identify the individual(s) and provide the dates, mode, and content of those discussions and communications.

Response: Not to my knowledge.

b. Are you currently in contact with anyone associated with A3P? If so, who?

Response: Not to my knowledge.

c. Have you ever been in contact with anyone associated with A3P? If so, who?

Response: I believe I met Mike Davis several years ago at a function at the U.S. Supreme Court. Otherwise, not to my knowledge or the best of my recollection.

[13] https://www.article3project.org/about

45. According to its Form 990 filed in 2024,[14] the mission of The Concord Fund (formerly known as the Judicial Crisis Network and the Judicial Confirmation Network) "is to promote the vision of liberty and justice in America, fidelity to the principles of federalism and the rule of law, to educate and organize citizens in this mission, and to encourage reforms that achieve these ends."

    a. Have you discussed any aspect of your nomination to the federal bench with any officials from or anyone directly associated with The Concord Fund, or did anyone do so on your behalf? If yes, identify the individual(s) and provide the dates, mode, and content of those discussions and communications.

    Response: Not to my knowledge.

    b. Are you currently in contact with anyone associated with The Concord Fund? If so, who?

    Response: Not to my knowledge.

    c. Have you ever been in contact with anyone associated with The Concord Fund? If so, who?

    Response: From reviewing the Form 990, I understand that Carrie Severino is associated with The Concord Fund. I believe I may have been introduced to Ms. Severino years ago at a formal dinner event, though I can't recall precisely. Otherwise, not to my knowledge or the best of my recollection.

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

    Response: On February 2, 2025, I was contacted by the White House Counsel's Office and provided basic biographical information; I then was asked by the White House Counsel's Office to participate in an interview on approximately February 4, 2025. I interviewed with attorneys from the White House and the Department of Justice on February 11, 2025, in Washington, District of Columbia; that same day, the White House Counsel's Office requested that I provide additional biographical information, which I provided. On February 13, 2025, I interviewed with Senator Blackburn and a member of her staff. On February 28, 2025, I interviewed with Senator Hagerty, and on February 6, 2025, I interviewed with a member of Senator Hagerty's staff. On February 14, 2025, the White House Counsel's Office contacted me to let me know that I was in consideration for the nomination. On April 29, 2025, I met with President Donald Trump concerning my possible nomination. On May 1, 2025, President Trump publicly announced his

[14] The Concord Fund, Form 990 (filed on May 13, 2024), *available at* https://projects.propublica.org/nonprofits/organizations/202303252/202411359349301886/full.

intent to nominate me; I understand the nomination was received in the Senate on May 12, 2025.

47. **Since you were first approached about the possibility of being nominated, did anyone associated with the Trump Administration or Senate Republicans provide you guidance or advice about which cases to list on your Senate Judiciary Questionnaire (SJQ)?**

Response: No.

a. Who?

Response: Not applicable.

b. What advice did they give?

Response: Not applicable.

c. Did anyone suggest that you omit or include any particular case or type of case in your SJQ?

Response: Not applicable.

48. **During your selection process did you talk with any officials from or anyone directly associated with the Article III Project, or did anyone do so on your behalf? If so, what was the nature of those discussions?**

Response: I did not speak with any officials from or anyone directly associated with the Article III Project as part of my selection process, nor, to my knowledge, did anyone do so on my behalf.

49. **During your selection process did you talk with any officials from or anyone directly associated with the Federalist Society, or did anyone do so on your behalf? If so, what was the nature of those discussions?**

Response: I did not speak with any officials from or anyone directly associated with the Federalist Society as part of my selection process, nor, to my knowledge, did anyone do so on my behalf.

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

Response: Please see my answer to Question 46. I have since been in contact with officials from the Justice Department's Office of Legal Policy regarding the nomination and the submittal of required paperwork to the Federal Bureau of Investigation and the Senate. Those communications occurred over the course of May 2025. In addition, in

early June 2025, I communicated with the White House Counsel's Office and the Justice Department's Office of Legal Policy in the course of preparing for the hearing before the Judiciary Committee.

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

Response: I drafted my responses to each of these questions. After receiving feedback from persons at the Office of Legal Policy at the U.S. Department of Justice, I finalized my answers and authorized them to be submitted to this Committee. My answers are my own.

Questions for the Record from Senator Alex Padilla
Senate Judiciary Committee
"Nominations"

June 11, 2025

Questions for Ms. Hermandorfer:

1. **Please identify any and all situations where it is permissible for a party, including the Executive Branch or one of its officers, departments, or agencies, to defy a court order.**

   Response: I have not had occasion to study these questions exhaustively; my general understanding of the relevant legal considerations is as follows. If there is a lower court order that binds the Executive Branch or an executive official or agency, the normal course is for the party to follow the order and seek appellate review if the party disagrees with the outcome; if the Supreme Court issues an order upon the conclusion of appellate review, that order is to be followed. With respect to potential exceptions to that rule, I am aware of scholarly work that has posited scenarios in which parties, including the Executive Branch or one of its officers, departments, or agencies, might permissibly disregard a court order. *See generally, e.g.*, William Baude, *The Judgment Power*, 96 Geo. L.J. 1807 (2008) (lack of jurisdiction); Gary Lawson & Christopher D. Moore, *The Executive Power of Constitutional Interpretation*, 81 Iowa L. Rev. 1267, 1326 (1996) (constitutional error "so clear that it is not open to rational question"); *see also* 17 Corpus Juris Secundum Contempt §§ 56-65 (discussing contempt defenses). I am also aware of the legal distinction that parties and jurists have drawn between a court's binding "judgment[]" and its "statements in opinions." *Camreta v. Greene*, 563 U.S. 692, 704 (2011); *see* Abraham Lincoln, First Inaugural Address (Mar. 4, 1861) (discussing *Dred Scott v. Sanford*). Because a case involving these issues could come before me if I were confirmed as a judge, it would be inappropriate to provide an answer that categorically pre-determines the validity of potential legal arguments for or against adhering to court orders. If any such issues came before me, I would commit to resolving them through the judicial process through careful consideration and application of the parties' arguments and the governing law and precedents.

2. **Please identify any and all situations in which you would advise a client to ignore or defy a court order.**

   Response: Because a case involving these issues could come before me if I were confirmed as a judge, it would be inappropriate to hypothesize an exhaustive list of fact- and case-specific situations in which it might be legally appropriate to ignore or defy a court order. Nor would dispensing that type of legal advice be a part of my role as a judge; instead, I would be limited to ensuring that any judicial order entered is consistent with governing constitutional, statutory, and equitable limits. I am generally aware, however, that certain interlocutory orders might be immediately appealable only via the avenue of a contempt finding, which may require a party to act in a manner inconsistent with judicial orders. *See generally* 15B Wright & Miller, Fed. Prac. & Proc. Juris. (2d

ed.) § 3914.23.1 Orders Prior to Trial—Review by Disobedience and Contempt; *Mohawk Industries, Inc. v. Carpenter*, 558 U.S. 100, 111 (2009) ("Another long-recognized option is for a party to defy a disclosure order and incur court-imposed sanctions."). The Sixth Circuit has explained that the "general rule" is that a non-party "seeking to appeal a discovery order must first disobey the order and suffer a contempt citation." *U.S. ex rel. Pogue v. Diabetes Treatment Centers of Am., Inc.*, 444 F.3d 462, 471 (6th Cir. 2006) (citing *Alexander v. United States*, 201 U.S. 117, 121-22 (1906)).

3. **Is it appropriate for the President of the United States to threaten or harass a judge when he disagrees with the outcome of a case over which that judge is presiding, or disagrees with aspects of a judge's decision or order?**

   Response: The First Amendment generally protects the rights of individuals to engage in political speech. To the extent this question asks me to opine on the appropriateness of certain statements of public officials or on the broader political debate regarding the permissible criticism of judicial officials, as a judicial nominee it would be inappropriate to provide further comment.

4. **In the process of applying to become a judge, did you have any conversations with President Trump, a member of his staff, or a member of an outside group about policy or personal positions or beliefs you would have on the bench, or decisions you would make on the bench?**

   Response: In interviewing for the nomination with the White House Counsel's Office, I discussed my beliefs regarding the designated role of Article III judges in our constitutional system and the importance of judges' faithfully and neutrally applying the governing laws in the cases that come before them. I did not otherwise discuss policy or personal positions I would have on the bench, or decisions I would make on the bench. It is a fundamental tenet of our federal judicial system that judges are not to decide cases based on their personal views or policy preferences.

Senator Peter Welch
Senate Judiciary Committee
Written Questions for Whitney Hermandorfer
Hearing on "Nominations"
Wednesday, June 4, 2025

1. **Prior to your nomination, did you meet with President Trump?**
   a. **On what date did you meet?**

      Response: April 29, 2025.

   b. **Who was present during the meeting?**

      Response: President Trump, Vice President Vance, the White House Counsel, and an attorney from the White House Counsel's Office.

   c. **Where did you meet?**

      Response: The Oval Office.

   d. **What was the purpose of the meeting?**

      Response: I understood the purpose of the meeting was to discuss my prospective nomination as a judge on the United States Court of Appeals for the Sixth Circuit.

   e. **What discussion took place during the meeting?**

      Response: We discussed my background as a Tennessean and former college basketball player, as well as my legal credentials and qualifications for a position as a judge on the United States Court of Appeals for the Sixth Circuit.

   f. **Did President Trump, or any other person present at the meeting, make any requests, promises, or other communication about your judicial philosophy, how you would rule in certain cases, or about current events? If so, please explain in detail.**

      Response: No.

2. **Did you sign a letter dated January 16, 2025, regarding Attorney General Pam Bondi's nomination?**
   a. **Did you sign the letter in your personal or professional capacity?**

      Response: I signed the letter in my role as Director of Strategic Litigation within the Office of the Tennessee Attorney General and Reporter.

   b. **Did you read the letter prior to signing it?**

Response: Yes.

Questions for the Record
Sen. Adam Schiff (CA)

Whitney Downs Hermandorfer, Nominee to the United States Court of Appeals for the Sixth Circuit

1. During your testimony, you described the Federalist Society, which you have been a member of since 2016, as "wonderful." Additionally, you clerked for three Supreme Court Justices who are current or former members of the Federalist Society. President Trump recently decried the organization for its "bad advice" on judicial nominations and called Leonard Leo, its Co-Chairman, a "real sleazebag."

    a. **Did the Federalist Society, or any current or former members of the Federalist Society, recommend you to the White House for nomination to the United States Court of Appeals for the Sixth Circuit?**

    Response: The above question could be read to mistakenly imply that I offered opinions on the Federalist Society as it relates to matters currently subject to political controversy. Respectfully, I did not do so, as the full content of my testimony makes clear and as consistent with my obligations as a judicial nominee. I am unaware of the substance of any conversations that my former employers or any other persons may have had regarding my nomination, qualifications, or background with officials in the White House.

    b. **Do you believe the Federalist Society provided "bad advice" to President Trump on judicial nominations?**

    Response: Consistent with the Code of Conduct and positions taken by prior nominees, it would be inappropriate for me, as a pending judicial nominee, to comment on the statements of any political figure or on any subject of political controversy.

2. During the Senate Judiciary Subcommittee hearing titled "The Supposedly 'Least Dangerous Branch': District Judges v. Trump," which you referenced during your testimony before the full Committee, my Republican colleagues suggested that case assignment procedures in multi-judge judicial districts are rigged against the Trump administration.

    a. **At any point during your career as an attorney, have you encountered any evidence that case assignment in multi-judge federal judicial districts or circuits is not random?**

    Response: I am aware that certain judicial districts maintain case-management orders that specify the handling of cases filed within particular

divisions of the district, and that certain categories of administrative-agency orders are subject to particularized venue limits set out in federal statutes. Otherwise, as this question expressly seeks a response to statements of political figures on a subject of political controversy, it would be inappropriate for me, as a pending judicial nominee, to opine on these issues.

b. Do you personally believe that federal judges are conspiring against the Trump administration by manipulating case assignment procedures?

Response: Consistent with the Code of Conduct and positions taken by prior nominees, it would be inappropriate for me, as a pending judicial nominee, to comment on the statements of any political figure, to characterize actions of jurists, or to opine on any subject of political controversy.

3. During your testimony before the Committee, specifically in response to Senator Kennedy and my questions about lower court orders, you suggested or refused to rule out, that there could be some instances in which a party may be justified in ignoring or violating a court order. Please list any instances in which you believe a party may justifiably ignore or violate a court order in detail below.

Response: I have not had occasion to study these questions exhaustively; my general understanding of the relevant legal considerations is as follows. If there is a lower court order that binds the Executive Branch or an executive official or agency, the normal course is for the party to follow the order and seek appellate review if the party disagrees with the outcome; if the Supreme Court issues an order upon the conclusion of appellate review, that order is to be followed. With respect to potential exceptions to that rule, I am aware of scholarly work that has posited scenarios in which parties, including the Executive Branch or one of its officers, departments, or agencies, might permissibly disregard a court order. *See generally, e.g.*, William Baude, *The Judgment Power*, 96 Geo. L.J. 1807 (2008) (lack of jurisdiction); Gary Lawson & Christopher D. Moore, *The Executive Power of Constitutional Interpretation*, 81 Iowa L. Rev. 1267, 1326 (1996) (constitutional error "so clear that it is not open to rational question"); *see also* 17 Corpus Juris Secundum Contempt §§ 56-65 (discussing contempt defenses). I am also aware of the legal distinction that parties and jurists have drawn between a court's binding "judgment[]" and its "statements in opinions." *Camreta v. Greene*, 563 U.S. 692, 704 (2011); *see* Abraham Lincoln, First Inaugural Address (Mar. 4, 1861) (discussing *Dred Scott v. Sanford*). And I am generally aware that certain interlocutory orders might be immediately appealable only via the avenue of a contempt finding. *See, e.g.*, *Mohawk Industries, Inc. v. Carpenter*, 558 U.S. 100, 111 (2009) ("Another long-recognized option is for a party to defy a disclosure order and incur court-imposed sanctions."). In *U.S. ex rel. Pogue v. Diabetes Treatment Centers of Am., Inc.*, the Sixth Circuit explained that the "general rule" is that a non-party "seeking to appeal a discovery

order must first disobey the order and suffer a contempt citation." 444 F.3d 462, 471 (6th Cir. 2006) (citing *Alexander v. United States*, 201 U.S. 117, 121-22 (1906)). Because a case involving these issues could come before me if I were confirmed as a judge, it would be inappropriate to provide an answer that categorically pre-determines the validity of potential legal arguments for or against adhering to court orders. If any such issues came before me, I would commit to resolving them through the judicial process through careful consideration and application of the parties' arguments and the governing law and precedents.

4. Some of your former colleagues at Williams & Connolly were involved in defending the law firm Perkins Coie against a Trump administration Executive Order which was ruled unconstitutional. In its motion for summary judgment, the Williams & Connolly team explained the integral role of lawyers in our society:

> Just as John Adams defended British soldiers after the Boston Massacre, lawyers today have a professional responsibility to defend unpopular clients and the rule of law. To protect the rights of all Americans, lawyers must be free to do their jobs without fear of government retribution. Otherwise, lawyers would "become nothing more than parrots of the views of whatever group wields government power at the moment." *Cohen v. Hurley*, 366 U.S. 117, 138 (1961) (Black, J., dissenting).

Without addressing the merits of the litigation, do you agree with your former colleagues at Williams & Connolly regarding the role of lawyers in our Republic?

Response: Under professional rules of practice, attorneys are ethically charged to zealously represent their clients even if politically unpopular. *See, e.g.*, Tenn. Rules of Professional Conduct, cmt. 1 to Rule 1.3. In my current role, I have undertaken that obligation to represent my clients even when doing so has exposed me to public criticism, harassment, and threats. At the same time, there are of course laws, rules, and ethical obligations that apply to attorneys when they are practicing or pursuing the course of a representation. How these rules and obligations interact implicates matters that are the subject of ongoing litigation, so it would be improper for me as a judicial nominee to opine further on the issue.

5. **The Republican-sponsored spending bill contains a provision that would impede the ability of federal judges to enforce contempt orders. The provision states: "No court of the United States may enforce a contempt citation for failure to comply with an injunction or temporary restraining order if no security was given when the injunction or order was issued." In your estimation, would this provision, if enacted, impede the ability of United States District Judges in Kentucky, Michigan, Ohio, and Tennessee to enforce contempt orders against the government or government officials?**

Response: Consistent with the Code of Conduct and positions taken by prior nominees, it would be inappropriate for me, as a pending judicial nominee, to comment on the potential import or effect of proposed legislation in hypothetical future cases or to opine on any subject of political controversy.

6. The governing statute of the United States Marshals Service requires: "the United States Marshals Service *shall* execute *all lawful writs, process, and orders* issued under the authority of the United States." Additionally, the "primary . . . mission" of the Service is to "provide for the security and to obey, execute, and enforce all orders of the United States District Courts . . . [.]" 28 U.S.C. § 566.

   a. Based on the Service's governing statute, would it be unlawful for an executive branch official to command the Service to disregard, or otherwise not execute, any "writ[], process [or] order[]" issued by a United States District Judge?

   Response: "Ordinarily, the marshals and the federal courts which they serve have a close and harmonious relationship," and any disputes between them are "rare, and appropriately so." *Pennsylvania Bureau of Correction v. U.S. Marshals Serv.*, 474 U.S. 34, 43-44 (1985) (Stevens, J., dissenting). But sometimes "administrative problems" come up. *Id.* "Customarily such problems are resolved on a voluntary, cooperative basis, either in the individual court or circuit, or in high-level discussions between the Executive and Judicial Branches." *Id.* at 44. I have not had occasion to study these questions exhaustively. I am aware that the Supreme Court described *Pennsylvania Bureau of Correction v. U.S. Marshals Service* as "an exceptional case" because it "involve[d] a dispute between the Marshals Service and a Federal District Court." *Id.* at 43. In resolving that dispute, the Supreme Court held that, "at least in the absence of an express finding of exceptional circumstances, that neither a magistrate nor a district court has authority to order the Marshals to transport state prisoners to the federal courthouse to testify in an action brought by a state prisoner under 42 U.S.C. § 1983 against county officials." *Id.* at 34.

   Consistent with the Code of Conduct and positions taken by prior nominees, it would be inappropriate for me, as a pending judicial nominee, to opine on how the cited statute or caselaw might apply to a hypothetical set of facts. If any such issues came before me as a judge, I would commit to resolving them through the judicial process through careful consideration and application of the parties' arguments and the governing law and precedents.