

**Nomination of Joshua Dunlap**  
**To be Circuit Judge on the U.S. Court of Appeals for the First Circuit**  
**Questions for the Record**  
**August 6, 2025**

**QUESTIONS FROM SENATOR GRASSLEY**

1. At the hearing, Senator Whitehouse stated: “I’ve been told that Republican Members are telling witnesses that they actually don’t need to answer questions for the record. And we’ve seen sham answers to questions for the record.”

**a. Has any Member of Congress told you that you do not need to answer questions for the record? If so, who?**

Response: No.

2. In 2012, you wrote a Letter to the Editor in the Scarborough Leader titled “Free Speech is being trampled.” In that letter, you complained about certain political signs being “plucked from the major intersections” and replaced with signs that promoted the opposite political position. Your article then stated that the perpetrators “engaged in a concerted campaign to trample free speech by stealing signs.”

At the hearing, you faced numerous questions about this 2012 article, including whether you were “active in Maine against [the] ballot initiative” underlying the stolen signs and whether your article took the public position that “gay marriage would affect our rights under the First Amendment, freedom of speech, and free exercise of religion.” Your Letter to the Editor is very short in length and does not support the underpinnings of these questions.

**a. In your own words, please describe the public position(s), if any, that you took in this 2012 Letter to the Editor.**

Response: As described in the 2012 Letter to the Editor, I expressed opposition to a “concerted campaign to trample free speech by stealing signs.” The Supreme Court has stated that the First Amendment “has its fullest and most urgent application” to the conduct of political campaigns. *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 347 (1995). The Letter to the Editor criticized the silencing of speech in the context of a political campaign through illegal conduct, namely, theft. That criticism focused on the specific individuals who were engaged in the illegal conduct. As the 2012 Letter to the Editor makes clear, I took a public position disapproving (1) illegal activity that silences political speech, and (2) the disregard for others’ constitutional rights demonstrated by the individuals engaged in that activity.

**Senator Dick Durbin**  
**Ranking Member, Senate Judiciary Committee**  
**Written Questions for Joshua D. Dunlap**  
**Nominee to be U.S. Circuit Judge for the First Circuit**  
**August 6, 2025**

1. In 2015, you testified before the Maine Legislature that doctors are financially incentivized to encourage minors to terminate pregnancies and that parental consent requirements protect children from “manipulation and abuse.”

- a. **Do you stand by your characterization that doctors profit from providing abortions?**

Response: In 2015, I provided testimony in support of LD 83, “An Act to Strengthen the Consent Laws for Abortions Performed on Minors and Incapacitated Persons,” which, as I testified, would “bring Maine’s abortion consent requirements into line with states such as Massachusetts and Rhode Island” and Maine’s own “requirements for consent to most other medical procedures.” These laws generally recognize that minors should obtain approval for medical procedures from individuals who do not have a financial interest in the procedure.

- b. **How do you reconcile your position with evidence that parental consent laws can endanger vulnerable minors who may face legitimate safety concerns at home?**

Response: In 2015, I testified that LD 83, “An Act to Strengthen the Consent Laws for Abortions Performed on Minors and Incapacitated Persons,” would have created a “parental or guardian consent requirement,” while allowing for “alternate consent from an adult sibling, stepparent, or grandparent” as well as a “judicial bypass” procedure. I testified that the law was consistent with *Planned Parenthood v. Casey*, 404 U.S. 833 (1992), which affirmed that parental consent provisions with judicial bypass procedures did not create an undue burden on the decision to choose an abortion.

2. According to federal and state campaign finance disclosures, you donated \$1,000 to Paul LePage’s gubernatorial re-election campaign in September 2022. This is after Governor LePage’s history of extreme statements had been widely reported.

In 2016, the Governor claimed that drug dealers “with the name D-Money, Smoothy Shifty...come from Connecticut and New York, they come up [to Maine], they sell their heroin...half the time they impregnate a young, white girl before they leave.” These comments were universally condemned as racist by both Republicans and Democrats. Yet LePage continued to double down on his comments, claiming that “black people come up the highway and they kill Mainers.”

**a. Do you agree with LePage that Black people come up to Maine to commit crimes?**

Response: I do not ascribe behavior to individuals based on their race or color. Further, Governor LePage's views are not relevant to whether I will be a fair and impartial judge. I will seek to faithfully and impartially apply the Constitution and federal law, adhering to all binding precedent. Consistent with the Code of Conduct for United States Judges and positions taken by prior nominees, it would be inappropriate for me, as a pending judicial nominee, to comment further on the statements of any political figure or on any subject of political controversy.

In response to another state lawmaker calling LePage's comments racist, LePage left a voicemail for the lawmaker, calling him a "son-of-a-bitch, socialist c—sucker," and urging the lawmaker to make the voicemail public because "I am after you." Rather than apologize, LePage claimed he was so angry that he wanted to kill the lawmaker in a duel, telling reporters, "I would not put my gun in the air, I guarantee you...I would point it right between his eyes, because he is a snot-nosed little runt[.]"

**b. Do you think it is appropriate to threaten anybody, let alone lawmakers?**

Response: I do not believe individuals should engage in threats. Further, Governor LePage's views are not relevant to whether I will be a fair and impartial judge. I will seek to faithfully and impartially apply the Constitution and federal law, adhering to all binding precedent. Consistent with the Code of Conduct for United States Judges and positions taken by prior nominees, it would be inappropriate for me, as a pending judicial nominee, to comment further on the statements of any political figure or on any subject of political controversy.

In 2010, LePage opposed the right of transgender children to even attend school, stating, "I just don't understand how people, at least sane people, would want to allow transgender [students] in our primary schools and our high schools."

**c. Do you agree with LePage that transgender students should not be allowed in schools?**

Response: I believe that people ought to be treated equally and with dignity, courtesy, respect, and fairness. Further, Governor LePage's views are not relevant to whether I will be a fair and impartial judge. I will seek to faithfully and impartially apply the Constitution and federal law, adhering to all binding precedent. Consistent with the Code of Conduct for United States Judges and positions taken by prior nominees, it would be inappropriate for me, as a pending judicial nominee, to comment further on the statements of any political figure or on any subject of political controversy.

LePage previously called the Internal Revenue Service (IRS) “the new Gestapo” in comments criticizing the U.S. Supreme Court’s decision upholding provisions of the Affordable Care Act. Local Jewish groups called for LePage to retract this statement.

**d. Do you agree with LePage that the IRS is the new Gestapo?**

Response: I have not compared any federal agency to the Gestapo. Further, Governor LePage’s views are not relevant to whether I will be a fair and impartial judge. I will seek to faithfully and impartially apply the Constitution and federal law, adhering to all binding precedent. Consistent with the Code of Conduct for United States Judges 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.

When discussing crime related to drug trafficking, LePage said that the enemy “are people of color or people of Hispanic origin,” and that “when you go to war...and the enemy dresses in red and you dress in blue, then you shoot at red.”

**e. Do you agree with LePage that people of color or people of Hispanic origin are the enemy?**

Response: I do not support or oppose any individuals based on their race or color. Further, Governor LePage’s views are not relevant to whether I will be a fair and impartial judge. I will seek to faithfully and impartially apply the Constitution and federal law, adhering to all binding precedent. Consistent with the Code of Conduct for United States Judges and positions taken by prior nominees, it would be inappropriate for me, as a pending judicial nominee, to comment further on the statements of any political figure or on any subject of political controversy.

All of these statements were reported by local and national news outlets years before you donated to his campaign.

**f. Why would you support a candidate with these kinds of beliefs?**

Response: Consistent with the Code of Conduct for United States Judges and positions taken by prior nominees, it would be inappropriate for me, as a pending judicial nominee, to comment on a political issue. *See* Code of Conduct of U.S. Judges, Canon 5.

**g. Why should people of color, Jewish people, or transgender youth believe that you will treat them fairly as litigants?**

Response: Should I be confirmed as a judge, I commit to faithfully and impartially applying all applicable laws and precedents to the parties who appear before me as litigants. Judges are obligated to administer justice without respect to persons. *See* 28 U.S.C. § 453. Further, I believe it is the obligation of judges to

treat all people equally and with dignity, courtesy, respect, and fairness. Each and every person deserves the opportunity to have their disputes heard by a neutral arbiter, and I would do my utmost to provide all litigants that opportunity.

3. In 2018, you represented the Maine Republican Party and sought to enjoin the Maine Secretary of State from employing ranked choice voting in the June 2018 primary elections. In an op-ed opposing the adoption of the popular vote in Maine, you criticized supporters of ranked choice voting.

**Given your personal, vocal opposition to ranked choice voting, if confirmed, would you recuse yourself from cases challenging the constitutionality of ranked choice voting?**

Response: All former litigators have a record of previous advocacy positions. I believe, however, that judges ought to put aside their personal beliefs, previous clients, and prior positions in order to apply the law fairly and faithfully, without respect of persons. As the Code of Conduct for United States Judges and federal law make clear, both the appearance of impartiality and actual impartiality are important in maintaining public confidence in our system of justice. Consistent with the Canon of Judicial Conduct and 28 U.S.C. § 455, 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.

4. **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, 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.

5. **Where were you on January 6, 2021?**

Response: I was working at my office in Portland, Maine.

6. **Do you denounce the January 6 insurrection?**

Response: Because the conduct of persons at the Capitol on January 6, 2021 is a matter of significant political debate and because the import of pardons issued to individuals prosecuted for involvement in the activities at the Capitol on January 6, 2021 is subject to ongoing litigation, it would be inappropriate for me to provide comment as a judicial nominee. *See* Code of Conduct of U.S. Judges, Canons 3(A)(6), 5.

**7. 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: Please see my answer to Question 6.

**8. 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. Alarming, 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, judicial orders are binding on the parties before the court. Relief from a lower court order generally must be pursued through the appellate process. The Supreme Court's decision, at the conclusion of appellate review, provides the final resolution and is binding. Parties to a proceeding may also be able to pursue legislative relief, if the order relates to the interpretation of a statute.

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

Response: Generally, judicial orders are binding on the parties before the court. Relief from a lower court order generally must be pursued through the appellate process. The Supreme Court's decision, at the conclusion of appellate review, provides the final resolution and is binding. I am aware that certain interlocutory orders might be immediately appealable only via the avenue of a contempt finding, following defiance of the court order. *See, e.g., Mohawk Industries, Inc. v. Carpenter*, 558 U.S. 100, 111 (2009); *Gill v. Gulfstream Park Racing Ass'n*, 399 F.3d 391, 397 (2005). I am also generally aware of scholarly work that has posited limited scenarios in which parties, including the Executive Branch, 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"). If called upon to resolve any case relating to this issue, I would carefully consider the parties' arguments and would faithfully apply all governing law and precedents. 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. *See Code of Conduct of U.S. Judges*, Canon 3(A)(6).

- 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 8.a.-b.

- 9. District judges have occasionally issued non-party injunctions, which may include “nationwide injunctions” and “universal injunctions.”**

- a. Are non-party injunctions constitutional?**

Response: The lawfulness of universal injunctions was addressed by the Supreme Court in *Trump v. CASA*, 145 S. Ct. 2540 (2025), which held that “[a] universal injunction can be justified only as an exercise of equitable authority, yet Congress has granted federal courts no such power.” *Id.* at 2550. As described in *Trump v. CASA*, the equitable power of courts generally extends only to granting complete relief to the parties before the court.

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

Response: Please see my answer to Question 9.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 9.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: I do not recall having sought a non-party injunction as a form of relief in my practice as a litigator.

- 10. 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.

- 11. Does the U.S. Constitution permit a president to serve three terms?**

Response: 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.”

12. On May 26, 2025, in a Truth Social post, President Trump referred to some judges whose decisions he disagrees with, as “USA HATING JUDGES” and “MONSTERS”, who “...SUFFER FROM AN IDEOLOGY THAT IS SICK, AND VERY DANGEROUS FOR OUR COUNTRY...”<sup>1</sup>

- a. **Do you agree that these federal judges are “USA HATING” and “MONSTERS” “...SUFFER FROM AN IDEOLOGY THAT IS SICK, AND VERY DANGEROUS FOR OUR COUNTRY...”?**

Response: I believe it is important for all federal judges to abide by all constitutional, statutory, and equitable limits on their authority to exercise the “judicial Power” under Article III of the U.S. Constitution, and I would seek to abide by those limits if confirmed. Consistent with the Code of Conduct for United States Judges and positions taken by prior nominees, it would be inappropriate for me, as a pending judicial nominee, to comment further on the statements of any political figure or on any subject of political controversy. *See* Code of Conduct of U.S. Judges, Canon 5.

- b. **Do you believe this rhetoric endangers the lives of judges and their families?**

Response: Consistent with the Code of Conduct for United States Judges 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. *See* Code of Conduct of U.S. Judges, Canon 5.

13. In addition to the President’s own attacks on judges, his adviser Stephen Miller took to social media to call a federal trade court’s ruling against President Trump’s tariffs a “judicial coup”<sup>2</sup> and later reposted the images of the three judges who decided the case and wrote, “we are living under a judicial tyranny.”<sup>3</sup>

- a. **Do you agree that these judges are engaged in a “judicial coup” and that “we are living under a judicial tyranny”?**

Response: I believe it is important for all federal judges to abide by all constitutional, statutory, and equitable limits on their authority to exercise the

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<sup>1</sup> Donald J. Trump (@realDonaldTrump), TRUTH SOCIAL (May 26, 2025, 7:22AM), <https://truthsocial.com/@realDonaldTrump/posts/114573871728757682>.

<sup>2</sup> Stephen Miller (@StephenM), X, (May 28, 2025, 7:48PM), <https://x.com/StephenM/status/1927874604531409314>.

<sup>3</sup> Stephen Miller (@StephenM), X, (May 29, 2025, 8:25AM), <https://x.com/StephenM/status/1928065122657845516>.



“judicial Power” under Article III of the U.S. Constitution, and I would seek to abide by those limits if confirmed. Consistent with the Code of Conduct for United States Judges and positions taken by prior nominees, it would be inappropriate for me, as a pending judicial nominee, to comment further on the statements of any political figure or on any subject of political controversy. *See* Code of Conduct of U.S. Judges, Canon 5.

**b. Do you believe this rhetoric endangers the lives of judges and their families?**

Response: Consistent with the Code of Conduct for United States Judges 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. *See* Code of Conduct of U.S. Judges, Canon 5.

**c. Would you feel comfortable with any politician or their adviser sharing a picture of you on social media if you issue a decision they disagree with?**

Response: Please see my answer to Question 13.b.

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

Response: Lower courts must follow 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.”); *United States v. Morosco*, 822 F.3d 1, 7 (1st Cir. 2016).

**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 First Circuit with respect to overturning circuit precedent. Generally, the First Circuit has recognized that “[u]niformity of decisions within a multi-panel circuit can only be achieved by strict adherence to prior circuit precedent, with the error-correcting function reserved to the court sitting en banc.” *Lacy v. Gardino*, 791 F.2d 980, 985 (1st Cir. 1986). To determine when the en banc court should overrule a published panel decision, Federal Rule of Appellate Procedure 35(b) offers guideposts, including, for example, whether the decision conflicts with other decisions from the First Circuit or from the Supreme Court. One exception to the necessity of en banc review is that a panel is not bound by prior circuit precedent if subsequent controlling authority has directly contradicted it. *U.S. Securities & Exchange Comm’n v. Sargent*, 66 F.4th 11, 15 (1st Cir. 2023). The stare decisis factors set out in *Dobbs v. Jackson Women’s Health Organization*, 597 U.S. 215, 268-90 (2022), and *Janus v. AFSCME, Council 31*, 585 U.S. 878, 916-29 (2018), would be considered when deciding whether the en banc court should overturn prior precedent.

**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 stare decisis factors such as those set out in *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215, 268-90 (2022), and *Janus v. AFSCME, Council 31*, 585 U.S. 878, 916-29 (2018).

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

Response: Consistent with the approach explained by Justice Kagan and followed by many other judicial nominees from various administrations, it is generally not appropriate for a judicial nominee to “grade” or give a “thumbs-up or thumbs-down” to particular decisions of the Supreme Court. Should I be confirmed, all Supreme Court precedent will be binding upon 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 would create the impression that I may not apply binding precedent when adjudicating cases and controversies.

**a. *Brown v. Board of Education***

Response: 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. In my view, consistent with that of prior nominees, *Brown* is beyond dispute, and judges can express their agreement with that principle without calling into question their ability to apply Supreme Court precedent faithfully. Therefore, consistent with the Code of Conduct for United States Judges, I can affirm that I believe that *Brown* was rightly decided.

**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: Consistent with the position of prior judicial nominees, I consider *Loving*, like *Brown*, to be one of the limited exceptions to the general principle that a nominee should not comment on the Supreme Court’s precedents. In my view, consistent with that of prior nominees, *Loving* is beyond dispute, and judges can express their agreement with that principle without calling into question their ability to apply Supreme Court precedent faithfully. Therefore, consistent with the Code of Conduct for United States Judges, I can affirm that I believe that *Loving* was rightly decided.

**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 Cakeshop* 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, I would be bound to faithfully apply all applicable precedent of the Supreme Court and the First Circuit, without regard to whether that binding precedent did or did not comport with the original public meaning of the Constitution. In many cases involving interpretation of a constitutional provision, the Supreme Court has sought to give words their original public meaning, *i.e.*, the meaning that the words conveyed to reasonable people at the time when they were written, viewed in their full context. This approach has routinely been used by the Supreme Court when interpreting the Constitution. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008) (Second Amendment); *Crawford v. Washington*, 541 U.S. 36 (2004) (Sixth Amendment). In certain contexts, the Supreme Court has utilized other approaches. *See, e.g., Roper v. Simmons*, 543 U.S. 551 (2005) (Eighth Amendment). If confirmed, I would be bound to apply all Supreme Court precedents and First Circuit precedent in these contexts. Absent binding precedent, I would seek to give words of any constitutional provision the meaning that they conveyed to reasonable people at the time that they were written, viewed in their full context.

**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, including *Obergefell*.

**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 17.c, and consistent with the answers of prior nominees and my duties under the Code of Conduct for United States Judges, I can affirm that *Loving* was rightly decided.

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

Based on my understanding of Supreme Court precedent, the Equal Protection Clause of the Fourteenth Amendment (1) requires that all persons similarly situated be treated alike, *see City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985), and (2) prevents discrimination based on suspect and quasi-suspect classifications, *see, e.g., Students for Fair Admission, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181 (2023); *United States v. Virginia*, 518 U.S. 515 (1996); *Nyquist v. Mauclet*, 432 U.S. 1 (1977). Based on my understanding of Supreme Court precedent, the Due Process Clause of the Fourteenth Amendment establishes both procedural protections, *see, e.g., Mathews v. Eldridge*, 424 U.S. 319 (1976), 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 held that these constitutional provisions prevent 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). As a lower court judge, I would be bound to apply all Supreme Court precedents, including these decisions. Because matters related to this question are the subject of ongoing litigation, it would be improper for me as a judicial nominee to comment further. *See* Code of Conduct of U.S. Judges, Canon 3(A)(6).

**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: Generally speaking, the Supreme Court has held that the First Amendment protects speech regardless of whether the government considers the speech to be right or wrong, *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc.*, 515

U.S. 557 (1995), and even if it is outrageous, *Snyder v. Phelps*, 562 U.S. 442 (2011); *United States v. Stevens*, 559 U.S. 460 (2010). The Supreme Court has also held that First Amendment protections may apply to individuals, *McIntyre v. Ohio Elecs. Comm’n*, 514 U.S. 334 (1995), as well as corporations, *see, e.g. Citizens United v. Fed. Elec. Comm’n*, 558 U.S. 310 (2010); *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974). As a lower court judge, I would be bound to apply all Supreme Court precedents, including these decisions. 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. *See* Code of Conduct of U.S. Judges, Canon 3(A)(6).

**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: The Supreme Court has addressed this issue in cases such as *City of Austin, Texas v. Reagan Nat’l Advertising of Austin, LLC*, 596 U.S. 61 (2022), and *Reed v. Town of Gilbert*, 576 U.S. 155 (2015). 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, a law is content-neutral if it can be “justified without reference to the content of the regulated speech.” *Reed*, 576 U.S. at 166 (quotation marks omitted). As a lower court judge, I would be bound to apply all Supreme Court precedents, including these decisions, in determining whether a regulation is content-based or content-neutral.

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

Response: The Supreme Court has addressed this issue in cases such as *Counterman v. Colorado*, 600 U.S. 66, 74 (2023), and *Virginia v. Black*, 538 U.S. 343 (2003). Among other things, these cases instruct that “[t]rue threats’ of violence is [a] historically unprotected category of communications.” *Counterman*, 600 U.S. at 74. These cases establish that “true threats are serious expressions conveying that a speaker means to commit an act of unlawful violence.” *Id.* (cleaned up); *see Black*, 538 U.S. at 359. As a lower court judge, I would be bound to apply all Supreme Court precedents, including these decisions, in determining whether a statement is protected under the true threats 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); *see Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 107 (2020); *Agency for Int’l Dev. v. All. For Open Soc’y Int’l, Inc.*, 591 U.S. 430 (2020). The Supreme Court has an extensive body of precedents discussing what due process requires in various contexts. As a lower court judge, I would be bound to apply all Supreme Court precedents, including these decisions, 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. *See* Code of Conduct of U.S. Judges, Canon 3(A)(6).

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

Response: Please see my answer to Question 29.

**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: The Citizenship Clause of the 14<sup>th</sup> Amendment to the United States Constitution provides that “[a]ll 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.” The meaning of this provision and its application in certain circumstances has been addressed in cases such as *United States v. Wong Kim Ark*, 169 U.S. 649 (1898). As a lower court judge, I would be bound to apply all Supreme Court precedents, including this decision, in addressing any citizenship claims. Because this question asks about matters that are the subject of ongoing litigation, it would be improper for me as a judicial nominee to comment further. *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: Please see my answer to Question 31.a.

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

Response: It is inappropriate for any person to be excluded from the opportunity to serve in the judicial branch simply based on, for example, that person’s race, sex, or religion. I further believe that it is important that the federal bench benefit from a wide variety of professional experiences. I personally have found it extremely valuable in my life

generally and in the practice of law specifically to learn from individuals with a variety of backgrounds, life experience, and viewpoints. I believe engagement with diverse viewpoints benefits our legal system. If I am confirmed, I would look forward to learning from and building relationships with my colleagues on the First 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 constitutional or statutory provision, I would be obligated as a judge to faithfully and impartially apply the First Step Act, and governing precedents interpreting it.

- 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 do not know what the author of that phrase 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.<sup>4</sup>**

- 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 Conduct for United States Judges 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. *See* Code of Conduct of U.S. Judges, Canon 5.

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

Response: Please see my answer to Question 34.b.i.

- 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 affiliations.

- 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.

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<sup>4</sup> Donald J. Trump (@realDonaldTrump), Truth Social (May 29, 2025, 8:10 PM), <https://truthsocial.com/@realDonaldTrump/posts/114593880455063168>.

**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. 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 have not spoken to or corresponded with any individuals associated with the Teneo Network as part of my selection process.

- b. 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.

- c. 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 the Heritage Foundation 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: No.

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

- 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 have not spoken to or corresponded with any individuals associated with AFLI as part of my selection process.

- 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: I have not spoken to or corresponded with any individuals associated with the Article III Project as part of my selection process.

- 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 any 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 beyond your internship?**

Response: I may have been asked to provide services to ADF. I do not recollect providing any services.

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

Response: No.

During law school, you interned at ADF, which vigorously opposes marriage equality and the rights of LGBTQ+ couples to adopt children. One of ADF’s founders attributed

the 2012 Sandy Hook Elementary School shooting and the 2019 El Paso shooting to the LGBTQ+ movement causing “family disruption.”

**d. Do you think the LGBTQ+ rights movement has caused family disruption?**

Response: I am unfamiliar with that statement and its context, or what its author intended to reference. The views of ADF or any of its founders are not relevant to whether I will be a fair and impartial judge. If confirmed, I will seek to faithfully and impartially apply the Constitution and federal law, adhering to all binding precedent. Consistent with the Code of Conduct for United States Judges and positions taken by prior nominees, it would be inappropriate for me, as a pending judicial nominee, to comment further on any subject of political controversy. *See* Code of Conduct of U.S. Judges, Canon 5.

**e. Do you think the LGBTQ+ rights movement is to blame for mass shootings?**

Response: Please see my response to Question 40.d.

The ADF opposed overturning anti-sodomy laws, claiming that it would lead to the legalization of pedophilia. In its amicus brief in *Lawrence v. Texas*, the organization claimed that it was “clearly” “reasonable to believe that same-sex sodomy is a distinct public health problem.”

**f. Has the Supreme Court’s ruling in *Lawrence* led to the legalization of pedophilia?**

Response: I am unfamiliar with that brief, the statement and its context, or what its author intended to reference. The views of ADF are not relevant to whether I will be a fair and impartial judge. If confirmed, I will seek to faithfully and impartially apply the Constitution and federal law, adhering to all binding precedent. Consistent with the Code of Conduct for United States Judges and positions taken by prior nominees, it would be inappropriate for me, as a pending judicial nominee, to comment further on any subject of political controversy. *See* Code of Conduct of U.S. Judges, Canon 5.

**g. Do you agree with the ADF that sodomy or other sexual activity between consenting adults is a distinct public health problem?**

Response: Please see my response to Question 40.f.

- 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: I have not spoken to or corresponded with any individuals associated with the Concord Fund as part of my selection process.

- 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 whether outside groups or special interests might be making donations in support of my confirmation, or whether organizations are advocating in support of 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.

- 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.

**Nomination of Joshua Dunlap**  
**Nominee to the United States Court of Appeals for the First Circuit**  
**Questions for the Record**  
**Submitted August 6, 2025**

**QUESTIONS FROM SENATOR WHITEHOUSE**

**Please answer each question and sub-question individually and as specifically as possible.**

- 1. In 2012, did you write the following about Maine Question 1, Maine’s ballot initiative that legalized same-sex marriage?**

Yes on 1 supporters vigorously assert that redefining marriage will not affect our rights under the First Amendment, freedom of speech and the free exercise of religion. Yet Yes on 1 supporters have engaged in a concerted campaign to trample free speech by stealing signs. Their criminal behavior tells you everything you need to know about their commitment to freedom.

Response: Question 1 quotes a portion of a Letter to the Editor I wrote in 2012. I refer you to the entire Letter to the Editor for appropriate context.

- 2. In 2006, did you work for Alliance Defense Fund (now Alliance Defending Freedom), a nonprofit organization that opposes women’s reproductive rights and marriage equality?**

Response: I participated in the Blackstone Fellowship, a program offered by the organization then known as the Alliance Defend Fund, in 2006. As part of that program, I worked as a research assistant for Professor Richard W. Garnett at Notre Dame Law School, and co-authored an article published in the *Cato Supreme Court Review*. ADF’s views are not relevant to whether I will be a fair and impartial judge. If confirmed, I will seek to faithfully and impartially apply the Constitution and federal law, adhering to all binding precedent.

- a. Is it true that Alan Sears, who served as the President and CEO of ADF between 1993 and 2017, wrote a 2003 book entitled “The Homosexual Agenda: Exposing the Principal Threat to Religious Freedom Today,” which described gay individuals as “trapped” and gay-rights advocates as bent on creating a nation of “broken families and broken lives”<sup>1</sup>?**

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

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<sup>1</sup> Erik Eckholm, *Legal Alliance Gains Host of Court Victories for Conservative Christian Movement*, NEW YORK TIMES (May 11, 2014), <https://www.nytimes.com/2014/05/12/us/legal-alliance-gains-host-of-court-victories-for-conservative-christian-movement.html>.



- b. Is it true that in 2003, ADF submitted an amicus brief arguing in support of criminalizing homosexuality in *Lawrence v. Texas*?**

Response: I am unaware of the details of any amicus brief submitted by ADF in *Lawrence v. Texas*.

- c. Is it true that in 2004, ADF sued to force then-Mayor of San Francisco Gavin Newsom to stop granting same-sex marriage licenses?**

Response: I am unaware of the details of any litigation involving ADF and then-Mayor of San Francisco Gavin Newsom.

**3. Did you receive your undergraduate degree from Pensacola Christian College?**

Response: I earned my bachelor degree from Pensacola Christian College, *summa cum laude*, in 2005.

- a. Is it true that the college describes in its rules and biblical foundations that marriage is between one “genetically male” man and one “genetically female” woman?**

Response: Pensacola Christian College’s religious views are not relevant to whether I will be a fair and impartial judge. If confirmed, I will seek to faithfully and impartially apply the Constitution and federal law, adhering to all binding precedent.

- b. Is it true that the college describes in its rules and biblical foundations that “fornication” and “homosexuality” are forbidden as forms of sexual immorality?**

Response: Please see my answer to Question 3.a.

- c. Did you provide the following statement in an interview for a Pensacola Christian College Newsletter regarding the college’s pre-law program?**

There is a great need for attorneys with Christian integrity to be a voice for righteousness. The Lord wants to use good men and women who are surrendered to Him and willing to follow Daniel’s example while serving in law or government.

Response: Question 3 quotes a portion of a statement I provided to the PCC Update in 2008. I refer you to the entire article for appropriate context.

- 4. In 2015, did you write the below statement as part of your testimony supporting a bill in Maine’s legislature to restrict Maine’s abortion consent laws (LD83, “An Act to Strengthen the Consent Laws for Abortions Performed on Minors and Incapacitated Persons”)?**

Given that current law gives physicians sole discretion in determining if the minor is mentally and physically capable of consent, the minor's fitness to consent is judged by the same individual who would financially benefit from that consent.

Response: Question 4 quotes a portion of testimony I provided to the Maine Legislature in 2015 supporting LD 83, "An Act to Strengthen the Consent Laws for Abortions Performed on Minors and Incapacitated Persons." I refer you to the entire testimony for appropriate context.

**5. In 2017, did you sign onto testimony in support of LD 327, "An Act to Allow a Wrongful Death Cause of Action for the Death of an Unborn Child"?**

Response: In 2017, I did sign testimony drafted by Daniel J. Mitchell, who was subsequently appointed to the Maine Superior Court by Governor Janet Mills, supporting LD 327, "An Act to Allow a Wrongful Cause of Death of an Unborn Child."

**6. In 2013, did you write a law review article which stated, "the Free Exercise Clause mandates a broad ministerial exception to Title VII," and that the ministerial exception permits "religious organizations to avoid the burden of conforming to any of Title VII's antidiscrimination provisions, including those regarding race, sex, and national origin"?**

Response: Question 6 correctly quotes a portion of a law review article I published in 2013. I refer you to the entire law review article for appropriate context.

**7. In 2021, did you write in a law review article that, when balancing individual rights and religious exercise, "[w]orship' is . . . any act that is motivated by one's religious beliefs"?**

Response: Question 7 correctly quotes a portion of a law review article I published in 2021. I refer you to the entire law review article for appropriate context.

**8. You said in your questionnaire that you met with President Trump regarding your possible nomination on July 2, 2025.**

**a. What did you discuss in that meeting?**

Response: We discussed generally my background, judicial philosophy, and Maine.

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

Response: No.

**9. Have you ever:**

**a. Appeared before a grand jury?**

Because the focus of my practice has been civil litigation generally, with a focus on appellate practice, complex litigation, and motions practice specifically, I have not previously appeared before a grand jury. This is not uncommon among judicial nominees whose practice has focused on civil litigation.

**b. Questioned a witness before a grand jury?**

Response: Please see my answer to Question 9.a.

**c. Drafted an application for a search warrant?**

Because the focus of my practice has been civil litigation generally, with a focus on appellate practice, complex litigation, and motions practice specifically, I have not previously drafted an application for a search warrant. This is not uncommon among judicial nominees whose practice has focused on civil litigation.

**d. Drafted an application for an arrest warrant?**

Because the focus of my practice has been civil litigation generally, with a focus on appellate practice, complex litigation, and motions practice specifically, I have not previously drafted an application for an arrest warrant. This is not uncommon among judicial nominees whose practice has focused on civil litigation.

**e. Drafted an indictment or criminal complaint?**

Because the focus of my practice has been civil litigation generally, with a focus on appellate practice, complex litigation, and motions practice specifically, I have not previously drafted an indictment or criminal complaint. This is not uncommon among judicial nominees whose practice has focused on civil litigation.

**f. Overseen production of discovery related to *Brady* obligations?**

Because the focus of my practice has been civil litigation generally, with a focus on appellate practice, complex litigation, and motions practice specifically, I have not previously overseen production of discovery related to *Brady* obligations. This is not uncommon among judicial nominees whose practice has focused on civil litigation.

**g. Held any law enforcement position, as an attorney, law enforcement officer, or otherwise?**

Because the focus of my practice has been civil litigation generally, with a focus on appellate practice, complex litigation, and motions practice specifically, I have not previously held any law enforcement position. This is not uncommon among judicial nominees whose practice has focused on civil litigation.

**h. Personally participated in any criminal proceeding?**

Because the focus of my practice has been civil litigation generally, with a focus on appellate practice, complex litigation, and motions practice specifically, I have not previously participated in any criminal proceeding. This is not uncommon among judicial nominees whose practice has focused on civil litigation.

**Nomination of Joshua Dunlap to be United States Circuit Judge for the First Circuit**  
**Questions for the Record**  
**Submitted August 4, 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. At your hearing, when Senator Coons asked you whether you met with President Trump, who else joined the meeting, and where the meeting took place—you answered that you met with President Trump in the Oval Office, and that you were joined by the “chief counsel.” You went on to say that you discussed your background and judicial philosophy.**

- a. What is the name of the “chief counsel” you referenced during your hearing?**

Response: David Warrington.

- b. How would you characterize your judicial philosophy? Provide examples of your personal life experiences along with the beliefs and principles that have influenced your judicial philosophy.**

Response: If confirmed, I would be bound to fulfill my obligations in exercising the Article III “judicial Power,” including the oath of judges set out in 28 U.S.C. § 453 and the Code of Conduct for United States Judges. As part of these obligations, I must neutrally and impartially apply all precedents of the Supreme Court and governing circuit precedent. Further, as a judge, I would be bound to apply any applicable constitutional or statutory law fairly and impartially in any case and controversy presented to me, with a fidelity to the legal text I would be applying and without regard to any personal policy preferences. A judge ought to exercise judgment, not will. The Federalist No. 78. Accordingly, as a general matter, when interpreting a legal text, I would seek to give words the meaning that they conveyed to reasonable people at the time that they were written, viewed in

their full context. Further, I believe that it is important for a judge to act with judicial independence, which means that a judge ought to make decisions based on the merits of the cases presented and not on any political consideration. I also believe that, as a judge, it would be incumbent upon me to act at all times with collegiality, civility, and respect toward my colleagues and all litigants who appear before me. All of these principles were exemplified for me during my clerkship with Judge Paul J. Kelly, Jr., of the United States Court of Appeals for the Tenth Circuit.

**c. Did you discuss the ongoing lawsuit between Harvard University and the Trump administration with President Trump?**

Response: No.

**d. Did you discuss any ongoing lawsuits or any issue that may come before the First Circuit?**

Response: No.

**3. 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: If I should I be confirmed, I would apply the standards set forth in applicable Supreme Court precedent, including as further described below.

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

Response: I understand that Supreme Court precedent has identified express enumeration as a relevant consideration. *See, e.g., Timbs v. Indiana*, 586 U.S. 146, 150 (2019); *McDonald v. City of Chicago*, 561 U.S. 742, 763-66 (2010).

**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: I understand that the Supreme Court has identified history and tradition as a relevant consideration. *See, e.g., Timbs v. Indiana*, 586 U.S. 146, 151-54 (2019); *McDonald v. City of Chicago*, 561 U.S. 742, 767-78 (2010). The Supreme Court has explained the types of sources to be considered in cases such as *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022), and *Washington v. Glucksberg*, 521 U.S. 702 (1997).

- 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: As a judge, should I be confirmed, any applicable precedent of the Supreme Court or the First Circuit that recognized the right at issue would be controlling precedent. In the absence of controlling precedent, 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: As a judge, should I be confirmed, I would consider any other factor identified by Supreme Court or First Circuit precedents as relevant to assessing whether a right is fundamental and protected by the Fourteenth Amendment.

4. In 2012, you wrote a letter to the Scarborough Leader concerning the removal of campaign signs opposing Maine's referendum, which legalized same-sex marriages. In response to questions from Senator Whitehouse, you stated that you did not participate in advocacy around the referendum but that did not mean that you didn't have a view on the issue of same-sex marriage.

- a. What is your personal view on the legality of same-sex marriage?**

Response: 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. 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. *Obergefell* is binding precedent and I would faithfully follow it, and all other Supreme Court precedents, if confirmed to be a judge on the First Circuit.

- b. Did you oppose the referendum in Maine that you wrote about in your letter?**

Response: Please see my response to Question 4.a.

- c. In response to Senator Whitehouse asking, "But you also said that allowing gay marriage would affect our rights under the First Amendment freedom of speech and free exercise of religion, so you at least took that public position, did you not?"—you responded affirmatively. Please explain how allowing gay marriage affects these rights.**

Response: The Supreme Court has addressed the interplay between gay marriage and the First Amendment in cases such as *Masterpiece Cakeshop v. Colorado*, 584 U.S. 617 (2018), and *303 Creative LLC v. Elenis*, 500 U.S. 570 (2023). These cases are binding precedent and I would faithfully follow them, and all other Supreme Court precedents, if confirmed to be a judge on the First Circuit.

**5. During your hearing, Senator Britt asked you about the interpretative theories of originalism and textualism and how you might apply them on the bench. You responded by stating that originalism would inform the approach you bring to the bench.**

Response: Consistent with the approach explained by Justice Kagan and followed by many other judicial nominees from various administrations, it is generally not appropriate for a judicial nominee to “grade” or give a “thumbs-up or thumbs-down” to particular decisions of the Supreme Court. Should I be confirmed, all Supreme Court precedent will be binding upon 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 would create the impression that I may not apply binding precedent when adjudicating cases and controversies.

**a. Was the *Obergefell v. Hodges* decision rightly decided? Why or why not?**

Response: *Obergefell* is a binding precedent of the Supreme Court, and if confirmed, I would faithfully apply it. Otherwise, please see my answer to Question 5, preface.

**b. Do you consider *Obergefell v. Hodges* to be settled law?**

Response: Please see my answer to Question 5.a.

**c. Was the *Loving v. Virginia* decision rightly decided? Why or why not?**

Response: Consistent with the position of prior judicial nominees, I consider *Loving*, like *Brown*, to be one of the limited exceptions to the general principle that a nominee should not comment on the Supreme Court’s precedents. In my view, consistent with that of prior nominees, *Loving* is beyond dispute, and judges can express their agreement with that principle without calling into question their ability to apply Supreme Court precedent faithfully. Therefore, consistent with the Code of Conduct for United States Judges, I can affirm that I believe that *Loving* was rightly decided.

**d. Do you consider *Loving v. Virginia* to be settled law?**

Response: Please see my answer to Question 5.c.



**e. How do you interpret the Equal Protection and Due Process Clauses of the 14th Amendment as they apply to LGBTQ individuals?**

Response: Generally, the Supreme Court has held that these constitutional provisions prevent discrimination based sexual orientation, *see Romer v. Evans*, 517 U.S. 620 (1996), protect a liberty interest to engage in private sexual conduct, *see Lawrence v. Texas*, 539 U.S. 558 (2003), and protect the right to same-sex marriage, *Obergefell v. Hodges*, 576 U.S. 6544 (2015). As a lower court judge, I would be bound to apply all Supreme Court precedents, including these decisions. Because matters related to this question are the subject of ongoing litigation, it would be improper for me as a judicial nominee to comment further. *See* Code of Conduct of U.S. Judges, Canon 3(A)(6).

**f. Does strictly adhering to the original meaning of the Equal Protection and Due Process Clauses of the 14th Amendment risk denying rights to groups that the framers didn't contemplate, such as Black people?**

Response: The Supreme Court has held that the “core purpose” of the Fourteenth Amendment was “doing away with all governmentally imposed discrimination based on race.” *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181, 206 (2023) (cleaned up). Accordingly, distinctions based on race are subject to strict scrutiny. *Id.* at 207. I would faithfully apply this decision and other decisions applying the Fourteenth Amendment in the context of racial discrimination if confirmed.

**i. If so, is that a flaw in originalism?**

Response: Please see my answer to Question 5.f.

6. At your hearing, in response to Senator Schmitt highlighting the fact that “if you are confirmed, you will be the only Republican-appointed judge on the First Circuit”—you stated that “Mainers are famously independent, I suspect that characterizes me as well.”

**a. Can you describe a recent example in your career where you demonstrated being “famously independent”?**

Response: I believe that it is important for any judge to independently and carefully assess the merits of each and every case and controversy presented to the court. Similarly, in the context of legal practice, independence requires a willingness to conduct careful research and to evaluate evidence carefully and objectively in order to reach legal conclusions that do not simply reflect the views and analysis of others. Throughout my career, I have worked independently to analyze and identify answers to complex legal issues. That began with my clerkship with Judge Paul J. Kelly, Jr., of the U.S. Court of Appeals for the Tenth Circuit, and has continued through and including my work on groundbreaking legal cases in Maine. If confirmed, I will continue to demonstrate independence.

7. **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 would not be appropriate for a lower court judge to depart from controlling precedent from a higher court. A court of appeals judge must follow controlling Supreme Court precedent. *See Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477, 484 (1989); *United States v. Morosco*, 822 F.3d 1, 7 (1st Cir. 2016).

8. 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: In certain contexts, the Supreme Court has considered “evolving standards” in determining the meaning of a constitutional provision. *See, e.g., Roper v. Simmons*, 543 U.S. 551 (2005) (Eighth Amendment). If confirmed, I would be bound to apply all Supreme Court precedents and First Circuit precedent in these contexts.

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

Response: Generally, the admissibility of scientific, technical, or other specialized knowledge in the determination of adjudicative facts is governed by Federal Rule of Evidence 702. If confirmed, I would faithfully apply any relevant precedents of the Supreme Court and the First Circuit governing the admission and consideration of such evidence.

9. **Do you agree that the constitutional right to travel across state lines is fundamental and well established?**

Response: The Supreme Court has stated that the “constitutional right to travel from one State to another is firmly embedded in our jurisprudence.” *Saenz v. Roe*, 526 U.S. 489, 498 (1999). *Saenz* states that this right “protects the right of a citizen of one State to enter and to leave another State.” *Id.* at 500. If confirmed, I would faithfully apply any relevant

precedents of the Supreme Court and the First Circuit relating to the right to travel. 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. *See* Code of Conduct of U.S. Judges, Canon 3(A)(6).

- a. Do you think it is constitutional for a state to restrict the interstate travel of its citizens?**

Response: Please see my answer to Question 9.

**10. Do you believe that the Constitution protects a fundamental right to privacy?**

Response: The Supreme Court has held that the Due Process Clause of the Fourteenth Amendment includes a right to privacy. *See, e.g., Lawrence v. Texas*, 539 U.S. 558 (2003); *Griswold v. Connecticut*, 381 U.S. 479 (1965). If confirmed, I would faithfully apply any relevant precedents of the Supreme Court and the First Circuit relating to the right to privacy. 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. *See* Code of Conduct of U.S. Judges, Canon 3(A)(6).

- a. Does that right extend to information about your health care and medical history?**

Response: Because this question is likely to be the subject of litigation in the courts, it would not be appropriate for me to opine on this issue. *See* Code of Conduct of U.S. Judges, Canon 3A(6).

- b. Do you agree that it is a violation of that right for states to surveil people's health care and medical history?**

Response: Because this question is likely to be the subject of litigation in the courts, it would not be appropriate for me to opine on this issue. *See* Code of Conduct of U.S. Judges, Canon 3A(6).

**11. 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 recognized that the right to privacy protects the use of contraceptives. *See Eisenstadt v. Baird*, 405 U.S. 438, 453-54 (1972); *Griswold v. Connecticut*, 381 U.S. 479, 485 (1965). If confirmed, I would faithfully apply any relevant precedents of the Supreme Court and the First Circuit relating to the right to privacy.

**12. 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 my answers to Questions 10 and 11 indicate, 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. Because this question is the subject of litigation in the courts, it would not be appropriate for me to opine on this issue. *See Code of Conduct of U.S. Judges, Canon 3A(6).*

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

Response: Generally, the Take Care Clause provides that the President “Shall take Care that the Laws be faithfully executed.” Art. II, § 3, cl. 5. Under this provision, the Executive Branch has certain authority to prioritize enforcement of federal law. *United States v. Texas*, 599 U.S. 670, 679 (2023). How these or any other legal principles apply to presidential action, and what the remedy is for any violation of the Take Care Clause, 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).*

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

Response: The 22d Amendment to the U.S. Constitution provides that “[n]o person shall be elected to the office of the President more than twice....”

**15. Who won the 2020 U.S. Presidential Election? I am not asking who Congress certified as the President.**

Response: President Biden was certified as the winner of the 2020 presidential election and served as the 46th President of the United States. Consistent with the position of prior judicial nominees when asked questions regarding the 2020 election, it would be inappropriate for me as a judicial nominee to offer further comment opining on the political or policy debate regarding the conduct of the 2020 presidential election or on statements by any political figure. *See Code of Conduct of U.S. Judges, Canons 3(A)(6), 5.*

**16. Do you agree with me that the attack at the U.S. Capitol on January 6, 2021, was an insurrection? Why or why not?**

Response: Because the conduct of persons at the Capitol on January 6, 2021 is a matter of significant political debate and because the import of pardons issued to individuals prosecuted for involvement in the activities at the Capitol on January 6, 2021 is subject to ongoing litigation, it would be inappropriate for me to provide comment as a judicial nominee. *See Code of Conduct of U.S. Judges, Canons 3(A)(6), 5.*

**17. Do you think the individuals convicted of assaulting law enforcement officers at the Capitol on January 6, 2021, deserved to be pardoned?**

Response: Please see my answer to Question 16.

**18. If you were the President on January 20, 2025, would you have pardoned the individuals convicted of assaulting law enforcement officers at the Capitol on January 6, 2021?**

Response: Please see my answer to Question 16.

**19. 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: Generally speaking, the Supreme Court has recognized that the First Amendment prohibits the government from engaging in viewpoint discrimination. *See, e.g., Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 828-29 (1995). The Supreme Court has further recognized that viewpoint discrimination is proscribed even if the speech would generally be categorically unprotected as, for instance, fighting words. *R.A.V. v. City of St. Paul*, 505 U.S. 377, 391 (1992). Viewpoint discrimination occurs when the government “targets not subject matter, but particular views taken by speakers on a subject.” *Rosenberger*, 515 U.S. at 829. As a lower court judge, I would be bound to apply all Supreme Court precedents, including these decisions, in determining whether a particular action is prohibited by the First Amendment. 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. *See* Code of Conduct of U.S. Judges, Canon 3(A)(6).

**20. 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 19.

**21. 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: As a general matter, there has been a long tradition in the United States of attorneys representing politically unpopular clients. Under professional rules of practice, attorneys are ethically charged to zealously represent their clients. Further, under professional rules of practice and other laws and rules, attorneys must abide by certain obligations in representing their clients. 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. *See* Code of Conduct of U.S. Judges, Canon 3(A)(6).

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

Response: As an initial matter, judges must adjudicate all claims fairly, regardless of the identity of the party. *See* 28 U.S.C. § 453. Further, 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); *see Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 107 (2020); *Agency for Int’l Dev. v. All. For Open Soc’y Int’l, Inc.*, 591 U.S. 430 (2020). The Supreme Court has an extensive body of precedents discussing what due process requires in various contexts. As a lower court judge, I would be bound to apply all Supreme Court precedents, including these decisions, 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. *See* Code of Conduct of U.S. Judges, Canon 3(A)(6).

**23. Does the public’s original understanding of the scope of a constitutional provision constrain its application decades later?**

Response: As a lower court judge, I would be bound to faithfully apply all applicable precedent of the Supreme Court and the First Circuit, without regard to whether that binding precedent did or did not comport with the original public meaning of the Constitution. In many cases involving interpretation of a constitutional provision, the Supreme Court has sought to give words their original public meaning, *i.e.*, the meaning that the words conveyed to reasonable people at the time when they were written, viewed in their full context. This approach has routinely been used by the Supreme Court when interpreting the Constitution. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008) (Second Amendment); *Crawford v. Washington*, 541 U.S. 36 (2004) (Sixth Amendment). In certain contexts, the Supreme Court has utilized other approaches. *See, e.g., Roper v. Simmons*, 543 U.S. 551 (2005) (Eighth Amendment). If confirmed, I would be bound to apply all Supreme Court precedents and First Circuit precedent in these contexts. Absent binding precedent, I would seek to give words of any constitutional provision the meaning that they conveyed to reasonable people at the time that they were written, viewed in their full context. In doing so, I would look to, among other things, the dictionary meaning of the words used, how the words are used in context, and any historical information bearing on the public understanding of those words.

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

Response: Please see my answer to Question 23.

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

Response: As a general matter, a judge should not decide cases based on their personal views or policy preferences but rather based on the Constitution and laws of the United States. 28 U.S.C. § 453. Judges should apply judgment, not will. The Federalist No. 78. Accordingly, judges must evaluate legal claims and determine the merits of those claims based on a fidelity to the legal text of any applicable constitutional or statutory provision, as well as any binding precedents.

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

Response: There may be certain contexts in which a judge will be required to consider 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) (injunctive relief). As a general matter, however, a judge should not decide cases based on their personal views or policy preferences but rather based on the Constitution and laws of the United States. 28 U.S.C. § 453. Judges should apply judgment, not will. The Federalist No. 78.

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

Response: As a general matter, a judge should not decide cases based on their personal views or policy preferences but rather based on the Constitution and laws of the United States. 28 U.S.C. § 453. Judges should apply judgment, not will. The Federalist No. 78. Accordingly, judges must evaluate legal claims and determine the merits of those claims based on a fidelity to the legal text of any applicable constitutional or statutory provision, as well as any binding precedents.

**28. 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 provided the judge with the legal acumen necessary to fulfill the judicial role, as well as the wisdom and integrity to treat all others—colleagues, staff, and litigants alike—with civility, fairness, and respect.

**29. Should you be confirmed, would you ever inform the parties before you that they could ignore your orders?**

Response: The rules governing civil and appellate proceedings allow for mechanisms by which a party may request that a judge stay or defer a party's obligation to comply with a judicial order. *See, e.g., Fed. R. App. P. 8, 41; Fed. R. Civ. P. 62.* 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. *See Code of Conduct of U.S. Judges, Canon 3(A)(6).*

- a. Under what circumstances would you tell a party they could ignore your orders?**

Response: Please see my answer to Question 29, preface.

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

Response: As a circuit judge, any issue relating to refusal to comply with a court order would likely be taken up by a panel of the First Circuit. I would consult with my colleagues and consider the appropriate remedy. 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. *See* Code of Conduct of U.S. Judges, Canon 3(A)(6).

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

Response: Generally speaking, to determine when the First Circuit, sitting en banc, should reconsider a published panel decision, it would be necessary to consider the factors set forth in Federal Rule of Appellate Procedure 35(b). Under that rule, the First Circuit would consider, for example, whether the decision conflicts with other decisions from the First Circuit or from the Supreme Court.

- 31. When it comes to conducting yourself ethically, who in the legal profession do you see as a role model?**

Response: I had the honor of clerking for Judge Paul J. Kelly, Jr., of the United States Court of Appeals for the Tenth Circuit. I have high regard for Judge Kelly as a mentor and as an ethical judge. I have also had the privilege of working with many prominent members of Maine's legal community whom I respect; chief among these is the late Ralph I. Lancaster, Jr., with whom I served as an assistant when he acted as a Special Master overseeing an original jurisdiction proceeding before the United States Supreme Court. I have a high regard for his personal conduct as a lawyer.

- 32. Under 28 U.S.C. § 455, “[a]ny justice, judge, or magistrate judge of the United States shall disqualify [themselves] in any proceeding in which [their] impartiality might reasonably be questioned.” Would you recuse yourself from future cases involving former clients?**

Response: I believe that both the appearance of impartiality and actual impartiality are important in maintaining public confidence in our system of justice. Consistent with the Code of Conduct for U.S. Judges and 28 U.S.C. § 455, 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.



**33. Discuss your proposed hiring process for law clerks.**

Response: I would plan to take a holistic approach to recruiting and hiring law clerks. I will evaluate any potential clerk's entire application and supporting materials to determine whether that person is the best fit for the job, taking into consideration factors such as grades, law review experience, and work experience. Recommendations will be important, as well as the candidate's understanding of the role of the law clerk in the judicial system and the clerk's ability to get along well with all the members in the chambers. I will look for clerks who demonstrate intellectual capacity, strong analytical and writing skills, and a willingness to engage in independent thought.

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

Response: Judges should treat everyone, including their law clerks and other judicial staff, equally and with dignity, courtesy, respect, and fairness. If confirmed, I will seek to ensure that discrimination has no place in my chambers. Otherwise, it would not be appropriate for me, as a judicial nominee, to address policy questions relating to whether Congress should amend Title VII's existing exemption for the federal judiciary.

34. In the past year, multiple studies have revealed ongoing problems with workplace conduct policies and outcomes in the federal judiciary. In a national climate survey, hundreds of judiciary employees reported that they experienced sexual harassment, discrimination, or other forms of misconduct on the job. A study by the Federal Judicial Center and the National Academy of Public Administration found the branch has failed to set up trusted reporting systems for employees who experience misconduct or ensure those handling complaints are adequately trained.

**a. If confirmed, what proactive steps would you take to ensure that the clerks and judicial assistants who work in your chambers are treated with respect and are not subject to misconduct?**

Response: Fundamentally, I believe that people ought to be treated as people. Every person deserves to be treated with dignity. As a judge, I will have the responsibility of setting the tone for my chambers, and I will seek to inculcate an atmosphere of respect and civility by my own example.

**b. What proactive steps would you take to ensure that any workplace-related concerns that your clerks and judicial assistants may have are fully addressed?**

Response: If confirmed, I will ensure that any rules and internal policies established by the First Circuit will be followed. I will also foster an open-door policy to ensure that any workplace-related concerns are fully addressed.

- c. If you are confirmed and you later hear from a colleague or your chambers staff that another judge is acting inappropriately, what steps would you take to help ensure the problem is addressed?**

Response: Please see my response to Question 34.b.

**Nomination of Joshua D. Dunlap**  
**Nominee to be U.S. Circuit Judge for the First Circuit**  
**Questions for the Record**  
**Submitted August 6, 2025**

**QUESTIONS FROM SENATOR CORY A. BOOKER**

1. 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."<sup>1</sup>

- 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"?**

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. *See* Code of Conduct of U.S. Judges, Canon 5.

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

Response: If confirmed, I would be bound to fulfill my obligations in exercising the Article III "judicial Power," including the oath of judges set out in 28 U.S.C. § 453 and the Code of Conduct for United States Judges. As part of these obligations, I must neutrally and impartially apply all precedents of the Supreme Court and governing circuit precedent. Further, as a judge, I would be bound to apply any applicable constitutional or statutory law fairly and impartially in any case and controversy presented to me, with a fidelity to the legal text I would be applying and without regard to any personal policy preferences. A judge ought to exercise judgment, not will. *The Federalist* No. 78. Accordingly, as a general matter, when interpreting a legal text, I would seek to give words the meaning that they conveyed to reasonable people at the time that they were written, viewed in their full context. Further, I believe that it is important for a judge to act with judicial independence, which means that a judge ought to make decisions based on the merits of the cases presented and not on any political consideration. I also believe that, as a judge, it would be incumbent upon me to act at all times with collegiality, civility, and respect toward my colleagues and all litigants who appear before me.

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<sup>1</sup> 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>.

**3. What do you understand originalism to mean?**

Response: I understand originalism to refer to a method of interpretation that requires a judge to interpret a constitutional provision in accordance with his or her best understanding of the original public meaning of that provision. Original public meaning is the meaning that words conveyed to reasonable people at the time when they were written, viewed in their full context. As a general matter, seeking the original public meaning of a constitutional text does not involve a subjective inquiry into the intent of the drafters of that text.

**4. Do you consider yourself an originalist?**

Response: I consider myself an originalist. In many cases involving interpretation of a constitutional provision, the Supreme Court has sought to give words their original public meaning. This approach has routinely been used by the Supreme Court when interpreting the Constitution. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008) (Second Amendment); *Crawford v. Washington*, 541 U.S. 36 (2004) (Sixth Amendment). In certain contexts, the Supreme Court has utilized other approaches. *See, e.g., Roper v. Simmons*, 543 U.S. 551 (2005) (Eighth Amendment). As a lower court judge, I would be bound to faithfully apply all applicable precedent of the Supreme Court and the First Circuit, without regard to whether that binding precedent did or did not comport with the original public meaning of the Constitution.

**5. What do you understand textualism to mean?**

Response: I understand textualism to refer to a method of interpretation that requires a judge to interpret a statutory provision in accordance with his or her best understanding of the original public meaning of that provision. Original public meaning is the meaning that words conveyed to reasonable people at the time when they were written, viewed in their full context. As a general matter, seeking the original public meaning of a statutory text does not involve a subjective inquiry into the intent of the drafters of that text.

**6. Do you consider yourself a textualist?**

Response: I consider myself a textualist. In many cases involving interpretation of a statutory provision, the Supreme Court has sought to “confine [a] provision’s meaning to its words,” when viewed in full context. *Milner v. Dep’t of Navy*, 562 U.S. 562, 572 (2011). As a lower court judge, I would be bound to faithfully apply all applicable precedent of the Supreme Court and the First Circuit, without regard to whether that binding precedent did or did not comport with the original public meaning of a statutory provision.

7. 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. 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: As a general matter, reliance on legislative history is unnecessary when a statute's language is unambiguous. *Carcieri v. Salazar*, 555 U.S. 379, 392 (2009). 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); see *Azar v. Allina Health Svcs.*, 587 U.S. 566, 579 (2019).

- b. Do you believe that congressional intent matters when interpreting a statute? Why or why not.**

Response: As a general matter, seeking the original public meaning of a statutory text does not involve a subjective inquiry into the intent of the drafters of that text. Courts "do not inquire what the legislature meant; [courts] ask only what the statute means." *Schwegmann Brothers v. Calvert Distillers Corp.*, 341 U.S. 384, 396 (1951) (Jackson, J., concurring) (quoting Justice Holmes). Thus, to the extent that congressional intent is relevant, it is generally determined from the plain language of the statute. *United States v. Locke*, 471 U.S. 84, 95 (1985).

8. 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.<sup>2</sup>

- a. What do you attribute this to?**

Response: Any unfair treatment of individuals on the basis of race is a significant cause for concern. The Supreme Court has held that the "core purpose" of the Fourteenth Amendment was "doing away with all governmentally imposed discrimination based on race." *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181, 206 (2023) (cleaned up). I believe that, should I be confirmed as a judge, it would be very important for me to be aware of the possibility of bias and to endeavor to minimize any bias in the conduct of my judicial duties. Otherwise, the cause of racial disparities, and the solution for such disparities, are important issues for consideration by the political branches. As such, it would be inappropriate for me, as a judicial nominee, to comment further on a subject of political controversy. See Code of Conduct of U.S. Judges, Canon 5.

9. 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.<sup>3</sup>

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<sup>2</sup> Sonja B. Starr & M. Marit Rehavi, *Racial Disparity in Federal Criminal Sentences*, 122 J. POL. ECON. 1320, 1323 (2014).

<sup>3</sup> 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](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2023/20231114_Demographic-Differences.pdf).

**a. What do you attribute this to?**

Response: Please see my answer to Question 8.a.

**10. What role do you think federal judges, who review difficult, complex criminal cases, can play in ensuring that a person's race did not factor into a prosecutor's decision or other instances where officials exercise discretion in our criminal justice system?**

Response: I believe that it is the obligation of all judges to be aware of the possibility of bias and to endeavor to minimize any bias in the conduct of their judicial duties.

**11. Do you believe it is an important goal for there to be demographic diversity in the judicial branch? Why or why not.**

Response: Should I be confirmed, I would welcome diversity in the judicial branch. It is inappropriate for any person to be excluded from the opportunity to serve in the judicial branch simply based on, for example, that person's race, sex, or religion. Further, I believe it is important to share experiences with, and learn from, persons of various backgrounds, experiences, and views. As a judge, it is important to be able to effectively understand a wide range of perspectives from people of various backgrounds. Diversity promotes that goal.

**12. Please indicate whether you have ever published written material or made any public statements relating to the following topics. If so, provide a description of the written or public statement, the date and place/publication where the statement was made or published, and a summary of its subject matter. Mere reference to the list of publications and statements provided in your Senate Judiciary Questionnaire is insufficient; provide specific responses.**

If you have not disclosed a copy of the publication or a transcript of the statement to the Judiciary Committee, please attach a copy or link to the materials and please explain why you have not previously disclosed them.

**a. Abortion**

Response:

*Testimony of Daniel J. Mitchell in Support of LD 327, Maine Legislature, Joint Standing Committee on the Judiciary (May 16, 2017).*

*Testimony in Support of LD 83, Maine Legislature, Joint Standing Committee on the Judiciary (Mar. 13, 2015).*

**b. Affirmative action**

Response: No.

- c. Contraceptives or birth control

Response: No.

- d. Gender-affirming care

Response: No.

- e. Firearms

Response: No.

- f. Immigration

Response: No.

- g. Same-sex marriage

Response:

Letter to the Editor, SCARBOROUGH LEADER, Oct. 26, 2012.

- h. Miscegenation

Response: No.

- i. Participation of transgender people in sports

Response: No.

- j. Service of transgender people in the U.S. military

Response: No.

- k. Racial discrimination

Response:

*When Big Brother Plays God: The Religion Clauses, Title VII and the Ministerial Exception*, 82 NOTRE DAME L. REV. 2005 (2007).

- l. Sex discrimination

Response:

*When Big Brother Plays God: The Religion Clauses, Title VII and the Ministerial Exception*, 82 NOTRE DAME L. REV. 2005 (2007).

m. Religious discrimination

Response:

*When Big Brother Plays God: The Religion Clauses, Title VII and the Ministerial Exception*, 82 NOTRE DAME L. REV. 2005 (2007).

n. Disability discrimination

*When Big Brother Plays God: The Religion Clauses, Title VII and the Ministerial Exception*, 82 NOTRE DAME L. REV. 2005 (2007).

o. Climate change or environmental disasters

Response: No.

p. “DEI” or Diversity Equity and Inclusion

Response: No.

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

Response: Generally, judicial orders are binding on the parties before the court. Relief from a lower court order generally must be pursued through the appellate process. The Supreme Court’s decision, at the conclusion of appellate review, provides the final resolution and is binding. I am aware that certain interlocutory orders might be immediately appealable only via the avenue of a contempt finding, following defiance of the court order. *See, e.g., Mohawk Industries, Inc. v. Carpenter*, 558 U.S. 100, 111 (2009); *Gill v. Gulfstream Park Racing Ass’n*, 399 F.3d 391, 397 (2005). I am also generally aware of scholarly work that has posited limited scenarios in which parties, including the Executive Branch, 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”). If called upon to resolve any case relating to this issue, I would carefully consider the parties’ arguments and would faithfully apply all governing law and precedents. 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. *See Code of Conduct of U.S. Judges*, Canon 3(A)(6).

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



Response: As an appellate judge, if confirmed, my primary role would be to review orders issued by district court judges on appeal. As a general matter, district courts may seek to enforce compliance with court orders civil and criminal contempt procedures. *See Int'l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 831 (1994); *Michaelson v. United States ex rel. Chicago, St. P., M., & O.R. Co.*, 266 U.S. 42, 45 (1924). The Supreme Court has cautioned that “the contempt power” is something that “uniquely is ‘liable to abuse,’” *Bagwell*, 512 U.S. at 831, and that “care is needed to avoid arbitrary or oppressive conclusions,” *Bloom v. Illinois*, 391 U.S. 194, 202 (1968) (citation omitted). The First Circuit has said, in the context of civil contempt proceedings, that a court must find (1) the alleged contemnor had notice that he was within the court’s ambit, (2) the order was clear and unambiguous, (3) the alleged contemnor had the ability to comply with the order, and (4) the order was violated. *United States v. Saccoccia*, 433 F.3d 19, 27 (1st Cir. 2005). Civil contempt sanctions may be applied with notice and opportunity to be heard; criminal contempt sanctions require provision of additional constitutional protections. *United States v. Winter*, 70 F.3d 655, 661 (1st Cir. 1995). I would apply these and any other applicable precedents to assess whether any contempt findings were appropriate. 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. *See Code of Conduct of U.S. Judges*, Canon 3(A)(6).

- 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? Please provide each one and the justification.**

Response: Please see my answer to Question 13.

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

Response: The President has the constitutional authority to veto legislation passed by Congress. Art. I, § 7, cl. 2. Otherwise, the Take Care Clause provides that the President “Shall take Care that the Laws be faithfully executed.” Art. II, § 3, cl. 5. Under this provision, the Executive Branch has discretion to prioritize enforcement and prosecution of federal law. *See United States v. Texas*, 599 U.S. 670, 679 (2023); *United States v. Nixon*, 418 U.S. 683, 693 (1974). The application of these legal principles 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).

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

Response: One of the leading Supreme Court cases addressing the scope of the executive power is *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952). The power of the executive branch to impound funds was directly addressed in *Train v. City of New York*, 420 U.S. 35 (1975), which held that the Environmental Protection Agency, under the language of the particular statute at issue, was required to allot to the states the entire amounts authorized to be appropriated by Congress. Further, the issue of impoundment is addressed by the

Impoundment Control Act of 1974, 2 U.S.C. § 681 *et seq.* Because this question relates to an issue that is the subject of litigation, it would not be appropriate for me to provide further comment. *See* Code of Conduct of U.S. Judges, Canon 3A(6).

**16. Does the president have the power to discriminate by withholding funds against state or local jurisdictions based on the political party of a jurisdiction's elected officials?**

Response: Please see my response to Question 15.

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

Response: The Supremacy Clause provides that the Constitution, along with federal laws and treaties made under its authority, constitutes the “supreme Law of the Land.” Art. VI, cl. 2. Under Supreme Court precedent, federal laws may preempt state law either expressly or implicitly through field or conflict preemption. *Murphy v. Nat’l Collegiate Athletic Ass’n*, 584 U.S. 453, 476-79 (2018); *Altria Grp., Inc. v. Good*, 555 U.S. 70, 76-77 (2008). As a lower court judge, I would be bound to apply all Supreme Court precedents, including these decisions, in addressing preemption claims.

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

Response: According to the Supreme Court, “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); *see Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 107 (2020); *Agency for Int’l Dev. v. All. For Open Soc’y Int’l, Inc.*, 591 U.S. 430 (2020). Various Supreme Court precedents address the process that is due in particular contexts. As a lower court judge, I would be bound to apply all Supreme Court precedents, including these decisions, 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. *See* Code of Conduct of U.S. Judges, Canon 3(A)(6).

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

Response: The Supreme Court has addressed the constitutional limits on legislative delegation of rulemaking authority in various cases. *See Fed. Comm’ns Comm’n v. Consumers Research*, 145 S. Ct. 2482 (2025); *Gundy v. United States*, 588 U.S. 128, 135-36 (2019); *Mistretta v. United States*, 488 U.S. 361, 372 (1989). Generally speaking, Congress must provide federal agencies an “intelligible principle” guiding their rulemaking. *Gundy*, 588 U.S. at 135. As a lower court judge, I would be bound to apply all Supreme Court precedents, including these decisions, in addressing nondelegation 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. *See* Code of Conduct of U.S. Judges, Canon 3(A)(6).

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

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. In my view, consistent with that of prior nominees, *Brown* is beyond dispute, and judges can express their agreement with that principle without calling into question their ability to apply Supreme Court precedent faithfully. Therefore, consistent with the Code of Conduct for United States Judges, I can affirm that I believe that *Brown* was rightly decided.

**21. 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 a binding precedent of the Supreme Court, and if confirmed, I would faithfully apply it.

**22. 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 a binding precedent of the Supreme Court, and if confirmed, I would faithfully apply it.

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

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 a binding precedent of the Supreme Court, and if confirmed, I would faithfully apply it.

**24. Do you believe that President Biden won the 2020 election? Note that this question is not asking who was certified as president in 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.

- a. Did Biden win a majority of the electoral vote in the 2020 election?**

Response: Please see my answer to Question 24.

- b. Do you believe that the results of the 2020 election, meaning the vote count, were accurate? If not, please provide why not and examples.**

Response: Please see my answer to Question 24.

25. The 22nd Amendment says that “no person shall be elected to the office of the President more than twice.”<sup>4</sup>

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

Response: President Trump was certified as the winner of the 2016 presidential election and served as the 45<sup>th</sup> President of the United States.

- b. Did Trump win a majority of the electoral vote in the 2016 election?**

Response: Please see my answer to Question 25.a.

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

Response: President Trump was certified as the winner of the 2024 presidential election and is serving as the 47<sup>th</sup> President of the United States.

- d. Did Trump win a majority of the electoral vote in the 2024 election?**

Response: Please see my answer to Question 25.c.

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

Response: The 22nd Amendment prohibits any person from being “elected to the office of the President” for a third term. U.S. Const., amend. XXII.

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

Response: No.

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<sup>4</sup> U.S. CONST. amend. XXII.

**27. 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.

**28. 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: No.

**29. 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: No.

**30. 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: No.

**31. 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: No.

**32. 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: No.

**33. 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: No.

**34. 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: No.

**35. 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.

**36. 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

Response: No.

b. Stewart Rhodes

Response: No.

c. Kelly Meggs

Response: No.

d. Kenneth Harrelson

Response: No.

e. Thomas Caldwell

Response: No.

f. Jessica Watkins

Response: No.

g. Roberto Minuta

Response: No.

h. Edward Vallejo

Response: No.

i. David Moerschel

Response: No.

j. Joseph Hackett

Response: No.

k. Ethan Nordean

Response: No.

l. Joseph Biggs

Response: No.

m. Zachary Rehl

Response: No.

n. Dominic Pezzola

Response: No.

o. Jeremy Bertino

Response: No.

p. Julian Khater

Response: No.

**37. 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.

**38. 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.

**39. 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.

**40. 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.”<sup>5</sup>**

**a. Do you agree with the above statement?**

Response: I do not ascribe good or evil to a category of people based on their political affiliations. Further, Mr. Davis’ views are not relevant to whether I will be a fair and impartial judge. I will seek to faithfully and impartially apply the Constitution and federal law, adhering to all binding precedent. Consistent with the Code of Conduct for United States Judges and positions taken by prior nominees, it would be inappropriate for me, as a pending judicial nominee, to comment further on the statements of any political figure or on any subject of political controversy. *See* Code of Conduct of U.S. Judges, Canon 5.

**b. 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.

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

Response: No.

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

Response: No.

**41. 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?**

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<sup>5</sup> <https://www.article3project.org/about>



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.

**42. 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 have not spoken to any individuals directly associated with the Article III Project as part of my selection process, nor, to my knowledge, did anyone do so on my behalf.

**43. 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 have not spoken to any individuals directly associated with the Federalist Society as part of my selection process, nor, to my knowledge, did anyone do so on my behalf.

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

On April 25, 2024, I interviewed with attorneys from the White House and Department of Justice in Washington, District of Columbia. On June 18, 2025, the White House Counsel's Office contacted me to let me know that I was under consideration for the nomination. On July 2, 2025, I met with President Donald Trump concerning my possible nomination, and met the same day with White House counsel. Since I was contacted by the White House Counsel's Office on June 18, 2025, I have been in contact with officials from the White House Counsel's Office and the Justice Department's Office of Legal Policy regarding the nomination, the submittal of paperwork to both the Federal Bureau of Investigation and the Senate, and preparation for the hearing before the Senate Judiciary Committee. Those communications occurred over June and July 2025.

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

Response: I prepared a draft response to 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 the Senate Judiciary Committee.

**Questions for the Record from Senator Alex Padilla**  
**Senate Judiciary Committee**  
**“Nominations”**

**July 30, 2025**

Questions for Mr. Dunlap:

- 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: Generally, judicial orders are binding on the parties before the court. Relief from a lower court order generally must be pursued through the appellate process. The Supreme Court’s decision, at the conclusion of appellate review, provides the final resolution and is binding. I am aware that certain interlocutory orders might be immediately appealable only via the avenue of a contempt finding, following defiance of the court order. *See, e.g., Mohawk Industries, Inc. v. Carpenter*, 558 U.S. 100, 111 (2009); *Gill v. Gulfstream Park Racing Ass’n*, 399 F.3d 391, 397 (2005). I am also generally aware of scholarly work that has posited limited scenarios in which parties, including the Executive Branch, 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”). If called upon to resolve any case relating to this issue, I would carefully consider the parties’ arguments and would faithfully apply all governing law and precedents. 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. *See Code of Conduct of U.S. Judges*, Canon 3(A)(6).

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

Response: I have never advised a client to ignore or defy a court order. Further, it would not be my role as a judge to provide advice. Instead, I would be called upon to issue orders that are consistent with the Constitution and all applicable federal law, including binding precedent of the Supreme Court or the First Circuit. Otherwise, please see my response to Question 1.

- 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: As a general matter, the First Amendment protects the rights of individuals to engage in speech, and, specifically, political speech. *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 347 (1995). There are exceptions for certain limited types of unprotected

speech. *See, e.g., Counterman v. Colorado*, 600 U.S. 66, 74 (2023). To the extent this question seeks my opinion regarding the statements of public officials, it would be inappropriate for me, as a pending judicial nominee, to provide further comment. *See* Code of Conduct of U.S. Judges, Canon 5.

- 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: No.