

Nomination of Eric Chunyee Tung
To be Circuit Judge on the U.S. Court of Appeals for the Ninth 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.

Senator Dick Durbin
Ranking Member, Senate Judiciary Committee
Written Questions for Eric Tung
Nominee to be U.S. Circuit Judge for the Ninth Circuit
August 6, 2025

1. During your time at Jones Day, you have represented cryptocurrency companies and industry groups on several occasions. You have submitted amicus briefs on behalf of the largest U.S.-based cryptocurrency exchange, Coinbase, as well as a major crypto industry group, the Blockchain Association. On other occasions, you have argued that standalone offerings of payment stablecoins are not securities. You also defended an individual accused of insider trading against charges brought by the U.S. Securities and Exchange Commission, arguing that the digital tokens at issue in the case were not investment contracts under securities law.

I have serious concerns about the lack of regulation surrounding cryptocurrency. Thousands of Americans have lost their savings to crypto scammers, and President Trump and his family have profited enormously off their crypto ventures.

- a. **If you are confirmed to serve on the Ninth Circuit, why should we have confidence that you will be willing to rule against the crypto industry or the financial interests of President Trump?**

Response: Judges take an oath to decide cases impartially “without respect to persons,” 28 U.S.C. § 453, and if confirmed, I would be bound by that oath. As a practicing lawyer, I have represented a wide variety of clients whose views do not necessarily reflect my own personal views. I believe that my breadth of experience in representing clients in various types of industries (including novel ones) would be an asset, not a liability, to the federal bench. That said, the role of the judge is not that of an advocate, but to uphold the rule of law regardless of party or interest. If confirmed, I would commit to that role.

- b. **Given your extensive representations, will you recuse yourself from cases involving the crypto industry?**

Response: The statute governing recusals states that a judge “shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.” 28 U.S.C. § 455. I do not understand that statute to require a judge to recuse from all “cases involving [an] industry” solely because of his having represented certain members of that industry in his prior role as a lawyer. If confirmed, I would evaluate recusals on a case-by-case basis.

In your Questionnaire, you wrote that you met with President Trump on July 2 about your potential nomination.

c. Did you discuss crypto with President Trump or anyone else in his Administration prior to your nomination?

Response: No.

2. Did President Trump lose the 2020 election?

Response: President Biden was certified as having won the 2020 presidential election, and served as the 46th President of the United States.

3. Where were you on January 6, 2021?

Response: I was in New Jersey visiting a friend.

4. Do you denounce the January 6 insurrection?

Response: This question seeks to elicit an opinion on a subject of political controversy. It would be inappropriate for me as a judicial nominee to offer one.

5. 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: This question asks me to weigh on a matter of political controversy that implicates the President's exercise of the pardon power. As a judicial nominee, and pursuant to the judicial code of conduct, I cannot comment on this issue.

6. 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: As a general matter, a party to a case is bound by an order issued by the judge, and the typical course is for the party to seek appellate review if the party disputes the outcome. Some have addressed various potential exceptions to that general rule, as prior nominees have pointed out. For instance, a party might avoid a finding of contempt for not complying with an order when it would have been “factually impossible” to do so, *United States v. Rylander*, 460 U.S. 752, 757 (1983), and indeed, incurring contempt might in some limited instances be the only path to appeal, *Mohawk Industries, Inc. v. Carpenter*, 558 U.S. 100, 111 (2009). *See also* 17 Corpus Juris Secundum Contempt §§ 56, 58-65 (addressing

other “defenses to contempt”). Because a case involving this issue could come before me if I were confirmed, it would be improper for me to comment further.

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

Response: See above.

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

Response: Every federal officer, in each branch of government, is obligated to uphold the Constitution. *See* Const. Art. VI. That said, as the Supreme Court has expressed, it is the “province and duty of the Judicial Department to say what the law is.” *Marbury v. Madison*, 5 U.S. 137 (1803). An order issued by a federal district court could thus be deemed inconsistent with the law by a federal appellate court, including by the Supreme Court.

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

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

Response: In *Trump v. CASA, Inc.*, the Supreme Court held that, under the Judiciary Act of 1789, federal courts do not have equitable authority to issue universal injunctions. 145 S. Ct. 2540, 2551-54 (2025). The Court reasoned that “equitable relief available in the federal courts is that ‘traditionally accorded by courts of equity’ at the time of our founding,” and that, because “[n]othing like a universal injunction was available at the founding, or for that matter, for more than a century thereafter . . . federal courts lack authority to issue them.” *Id.* at 2560. The Court did not address the constitutionality of universal injunctions. And as that issue may one day come before me as a judge, neither should I. *Cf. id.* at 2563 (Thomas, J., concurring) (“[S]erious constitutional questions would arise even if Congress purported to one day allow universal injunctions.”).

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

Response: See above.

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

Response: See above.

- 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.**

Responses: To my recollection, I have not sought a universal non-party injunction as a form of equitable relief.

- 8. 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.

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

Response: The 22nd Amendment states that “[n]o person shall be elected to the office of the President more than twice[.]” To the extent this question seeks to elicit an opinion regarding a current political dispute, it would be inappropriate for me as a judicial nominee to provide one.

- 10. 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...”¹**

- 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: As a judicial nominee, I cannot and should not comment on public statements made by political figures.

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

Response: See above.

- 11. 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”² and later reposted the images of the three judges who decided the case and wrote, “we are living under a judicial tyranny.”³**

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

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

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

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

Response: See Response to Question 10.a.

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

Response: See above.

- 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: See above.

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

Response: A lower federal court is bound by directly controlling Supreme Court precedent and should not depart from it.

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

Response: A three-judge panel generally cannot overrule circuit precedent. That “power is reserved to the circuit court sitting en banc.” *United States v. Plouffe*, 445 F.3d 1126, 1127 (9th Cir. 2006). In the Ninth Circuit, there is an “exception to this general rule,” where “an intervening higher authority has issued an opinion that is ‘clearly irreconcilable’ with [the Ninth Circuit’s] prior circuit precedent.” *Id.*; see also *Scafidi v. Las Vegas Metropolitan Police Dept.*, 966 F.3d 960, 963 (9th Cir. 2020) (“On issues of state law, we are not bound by a prior opinion of our court where an intervening decision from a state court of last resort has ‘undercut the theory or reasoning underlying the prior circuit precedent in such a way that the cases are clearly irreconcilable.’”). In that case, “a panel is free to act disregarding that precedent.” *Plouffe*, 445 F.3d at 1127.

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

Response: The Supreme Court accords *stare decisis* effect to its past decisions and follows standards set forth in its caselaw in determining when to overrule precedent.

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

Response: Supreme Court precedent would be binding on me as a circuit judge if I am confirmed. As past nominees have stated, it is inappropriate to grade or give a thumbs up

or thumbs down on particular precedents of the Supreme Court with the exception of *Brown v. Board of Education* and *Loving v. Virginia*, which were correctly decided.

a. *Brown v. Board of Education*

Response: See above.

b. *Plyler v. Doe*

Response: See above.

c. *Loving v. Virginia*

Response: See above.

d. *Griswold v. Connecticut*

Response: See above.

e. *Trump v. United States*

Response: See above.

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

Response: See above.

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

Response: See above.

h. *Obergefell v. Hodges*

Response: See above.

i. *Bostock v. Clayton County*

Response: See above.

j. *Masterpiece Cakeshop v. Colorado*

Response: See above.

k. *303 Creative LLC v. Elenis*

Response: See above.

l. *United States v. Rahimi*

Response: See above.

m. *Loper Bright Enterprises v. Raimondo*

Response: See above.

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

Response: If confirmed as a circuit judge, I would be bound by the precedents of the Supreme Court. Many of those precedents have relied on the original meaning of the Constitution when resolving cases or controversies.

17. How do you decide when the Constitution’s “original meaning” should be controlling?

Response: See above.

18. Does the “original meaning” of the Constitution support a constitutional right to same-sex marriage?

Response: The Supreme Court in *Obergefell v. Hodges* held that there is a constitutional right to same-sex marriage. That ruling is binding precedent.

19. Does the “original meaning” of the Constitution support the constitutional right to marry persons of a different race?

Response: The Supreme Court in *Loving v. Virginia* held that there is a constitutional right to marry persons of a different race. That ruling is binding precedent.

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

Response: The Fourteenth Amendment’s Equal Protection and Due Processes clauses state that “[n]o State shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” The Equal Protection Clause has been construed to prohibit laws that classify individuals based on protected characteristics unless strict or intermediate scrutiny is satisfied (depending on the characteristic at issue). See *Students for Fair Admission, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181 (2023); *United States v. Skrmetti*, 145 S. Ct. 1816 (2025). The Due Process Clause has been construed to require basic procedural protections and to guarantee

certain substantive rights that are “deeply rooted in this Nation’s history and tradition” and “implicit in the concept of ordered liberty.” *Dobbs v. Jackson Women’s Health Organization*, 597 U.S. 215, 231 (2022).

21. 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?

The Supreme Court has applied the Fourteenth Amendment to individuals in those groups, such as in *United States v. Virginia*, 518 U.S. 515 (1996) and *Obergefell v. Hodges*, 576 U.S. 644 (2015). Those cases are binding precedent, and to the extent the question is asking me to apply the principles set forth in Supreme Court caselaw to specific facts, it would be inappropriate for me as a judicial nominee to do so.

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

Response: See Response to Question 16.

23. 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: See Response to Question 16.

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

Response: The First Amendment states, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” Construing that constitutional provision, the Supreme Court has stated that some forms of speech fall within narrow categories of communications that have been historically excluded from constitutional protection—such as “true threats,” which are “‘serious expression[s]’ conveying that a speaker means to ‘commit an act of unlawful violence.’” *Counterman v. Colorado*, 600 U.S. 66, 74 (quoting *Virginia v. Black*, 538 U.S. 343, 359 (2003)).

25. How would you determine whether a law that regulates speech is “content-based” or “content-neutral”? What are some of the key questions that would inform your analysis?

Response: As the Supreme Court has stated, 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, Texas v. Reagan Nat’l Advertising of Austin, LLC*, 596 U.S. 61, 69 (2022) (quoting *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015)). If confirmed, I would follow this and other relevant precedent in determining

whether law that regulates speech is “content-based” or “content-neutral” in a case or controversy before me.

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

Response: See Response to Question 24.

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

Response: The Due Process Clause of the Fifth Amendment provides that “[n]o person shall . . . be deprived of life, liberty, or property, without due process of law.” Whether this Clause applies is usually less of a question than how much process is due. If confirmed, I would adhere to binding precedent on this issue.

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

Response: This question seeks to elicit an opinion on matters of pending litigation and political controversy. For that reason, I cannot comment on it as a judicial nominee.

29. 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: This issue is currently being litigated and, for that reason, I cannot comment on it as a judicial nominee.

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: See above.

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

Response: No one should be excluded from the federal bench on the basis of his or her race, sex, ethnicity, religion, or any other protected characteristic.

31. 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: If confirmed, I would view my role to be to interpret the text of the First Step Act impartially and apply any binding precedent that construes that Act.

b. Will you commit to fully and fairly considering the individualized circumstances of each defendant who comes before you when imposing sentences to ensure that they are properly tailored to promote the goals of sentencing and avoid terms of imprisonment in excess of what is necessary?

Response: As a circuit judge if confirmed, I would not be “imposing sentences” on criminal defendants as a district court judge would; that said, I would commit to reviewing any sentences that may come before me on appeal in accordance with applicable law.

32. 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 is specifically meant by that phrase in this context.

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.⁴

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?

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

Response: This question seeks to elicit an opinion concerning a public statement made by a political figure. Pursuant to the judicial code of conduct, and as a judicial nominee, I cannot comment.

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

Response: See above.

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

Response: If confirmed, I will consult with the ethical codes applicable to judges in deciding whether to remain affiliated.

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: No.

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.

The Federalist Society's annual reports for 2014 and 2019 list you as a member of its Madison Club, indicating you donated between \$1,000 and \$4,999 to the Federalist Society.

f. Please list all years in which you donated \$1,000 or more to the Federalist Society.

I donated \$1,000 in January 2015.

- 33.** 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: No.

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

Response: I was invited to speak at a Heritage Foundation event on March 13, 2017, titled “Who Is Neil Gorsuch? A Closer Look at Trump’s Supreme Court Nominee,” but I could not attend due to a conflict.

- 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.

- 34. 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: No.

- 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.

35. 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: No.

- b. Have you ever been asked to and/or provided services to AFLI, including but not limited to 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.

36. The Article III Project is an organization which claims that, “The left is weaponizing the power of the judiciary against ordinary citizens.” Mike Davis is the founder and president of the Article III Project. At your hearing, you said, “Mike Davis is my friend” and that you had conversations with Davis regarding your potential nomination.

- a. Please provide details of your discussions with Davis regarding your nomination.**

Response: We spoke about my background and qualifications regarding the nomination.

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

Response: Yes, Mr. Hammer offered me congratulations on my nomination.

- c. 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.

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

Response: No.

In addition to statements made by Davis that were highlighted at your hearing, Davis has a history of making offensive statements about women. For example, in January 2024, he referred to Anita Hill, Christine Blasey Ford, and Jean Carroll as “three Democrat women who let Democrat operatives use them like cheap whores. (And liked it.)”.⁵

e. Do you condemn this statement?

Response: It would be inappropriate for me as a judicial nominee to comment.

Davis has also made offensive statements about immigrants. For example, in September 2023, he said: “We’re gonna put kids in cages. It’s gonna be glorious.”⁶

f. Do you condemn this statement?

Response: It would be inappropriate for me as a judicial nominee to comment.

37. 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: No.

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

Response: No.

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

Response: No.

38. 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.

⁵ Mike Davis (@mrddmia), X (Jan. 17, 2024, 8:22 PM), <https://x.com/mrddmia/status/1747791643057565944>.

⁶ *Dems RAGE As Republicans EXPOSE Biden Crimes, DNC in PANIC to REPLACE Joe | Sen. Feinstein DEAD*, THE BENNY SHOW (Sept. 29, 2023), <https://www.youtube.com/watch?v=-s9-SotiUkI>.

- 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: No.

- 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 not aware of any allegations of that nature suggested by your question. To the extent the question seeks to elicit an opinion on a political issue, it would be inappropriate for me as a judicial nominee to offer one.

- 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 am not aware of any allegations of that nature suggested by your question. To the extent the question seeks to elicit an opinion on a political issue, it would be inappropriate for me as a judicial nominee to offer one.

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

Response: I am not aware of any allegations of that nature suggested by your question. To the extent the question seeks to elicit an opinion on a political issue, it would be inappropriate for me as a judicial nominee to offer one.

Nomination of Eric Tung
Nominee to the United States Court of Appeals for the Ninth 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. 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: I discussed my background and qualifications.

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

Response: No.

2. At your hearing, you said you “subscribe to originalism.”

a. When did you first subscribe to originalism?

Response: Since law school. At the hearing, I also stated that I would adhere to Supreme Court precedent.

b. Have you subscribed to originalism since at least March 2025?

Response: See above.

c. Did you participate in a Federalist Society debate on originalism at UCLA Law School in March 2025?

Response: Yes.

d. At that event, did you argue in defense of “traditional originalism”?

Response: The programming for the event had described the position I was to defend as “traditional originalism” to distinguish it from “common good originalism.” As outlined in my notes for the event, I understood the former position to mean just “originalism,” a “method of interpretation that looks to the meaning of the text of a law as that text was understood at the time the law was passed.”

- e. **Do your notes for that event that you disclosed to the Committee accurately reflect your opening remarks at or thinking about that event?**

Response: Yes.

- f. **In your notes for that event, did you write: “To be sure, Originalism recognizes that there may be hard cases. But most cases, including the high profile ones, are not hard. Whether there’s a constitutional right to abortion, same sex marriage, sodomy, pornography, transgender procedures – the answer for the originalist is simple: No.”**

Response: Yes. The notes for the event also stated that “[f]or the originalist, it’s not a matter of advancing a traditionalist agenda, it is about discerning what the words of the constitution – for example, ‘due process’; ‘equal protection’ ‘abridge the freedom of speech’ – meant to the public at the time they were ratified.”

- g. **In your notes for that event, did you write: “Read in a vacuum by a literalist or libertarian not anchored in history, the terms ‘liberty’ ‘due process’ ‘equal protection’ can cause serious mischief. See, for example, the Court’s substantive due process cases, beginning with Dred Scott and on through Roe v. Wade, Planned Parenthood v. Casey, Lawrence v. Texas, Obergefell. The are all of a piece -- reading meanings into the constitutional text based on abstract notions of the good to invalidate perfectly valid laws.”**

Response: Yes. The notes for the event also stated that “originalism . . . may lead to results that one may not like or that advance bad policy,” which “is a feature of originalism, and I would submit, of being a good judge who leaves policy questions up to the People to decide.”

- h. **In your notes for that event, did you write: “[Mr. Hammer] uses *Bostock* as a prime example of how textualism and originalism have gone off the rails and why ‘common good’ originalism is necessary. But Mr. Hammer mistakes a *misapplication* of textualism with an irredeemable flaw in textualism that would require jettisoning the entire enterprise.”**

Response: Yes.

3. At your hearing, you refused, on the grounds that you would be commenting on a political question, to answer Senator Booker when he asked you whether you believe Democrats are “evil.” However, you answered “no” when Senator Kennedy asked you the same question.

- a. **Why did you answer Senator Kennedy but not Senator Booker?**

Response: Senator Booker asked his question in the context of seeking to elicit an opinion as to whether I agreed or disagreed with certain comments made by Mike Davis. Those statements concerned the conduct of political figures and related

political controversies, including the conduct of political figures surrounding the nominations and confirmations of Justice Gorsuch and Justice Kavanaugh. It would have been inappropriate for me as a judicial nominee to offer that opinion. By contrast, Senator Kennedy asked me whether a person was evil by the mere fact of his or her political affiliation—to which I answered no.

Nomination of Eric Tung to be United States Circuit Judge for the Ninth Circuit
Questions for the Record
Submitted August 5, 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. How would you describe your judicial philosophy?

Response: If I were confirmed as a federal appellate judge, I would strive faithfully to construe the Constitution and the laws of the United States when exercising the judicial power in a case or controversy. *See* Const. Art. III. The power to be exercised by a judge in our system of government is distinct from the legislative power and the executive power—for “[w]ere the power of judging joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control” because “*the judge* would then be *the legislator*,” or “[w]ere it joined to the executive power, *the judge* might behave with all the violence of an *oppressor*.” The Federalist No. 47 (emphasis in original). Accordingly, I would subscribe to the judicial philosophy that, consistent with Article III, limits the role of a judge to be a neutral interpreter of the law, not the maker or executor of the laws, a role more appropriately belonging to the policymaking and political branches of our government.

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 confirmed, I would follow Supreme Court precedent in determining whether a right is protected as fundamental under the Fourteenth Amendment.

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

Response: Yes.

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

Response: Yes, I would consider whether the right is deeply rooted in this nation’s history and tradition. I would consult the types of sources that the Supreme Court has set

forth in cases such as *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022), *McDonald v. City of Chicago*, 561 U.S. 742 (2010), and other relevant precedents.

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

Response: Yes, I would consider whether the right has been previously recognized by Supreme Court or circuit precedent, which would be binding. Precedent in another court of appeals would not be binding but would be considered for its persuasive value.

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

Response: Yes.

- e. **What other factors would you consider?**

Response: I would consider other factors identified by Supreme Court and Ninth Circuit precedent.

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

Response: A three-judge panel generally cannot overrule circuit precedent. That “power is reserved to the circuit court sitting en banc.” *United States v. Plouffe*, 445 F.3d 1126, 1127 (9th Cir. 2006). In the Ninth Circuit, there is an “exception to this general rule,” where “an intervening higher authority has issued an opinion that is ‘clearly irreconcilable’ with [the Ninth Circuit’s] prior circuit precedent.” *Id.*; see also *Scafidi v. Las Vegas Metropolitan Police Dept.*, 966 F.3d 960, 963 (9th Cir. 2020) (“On issues of state law, we are not bound by a prior opinion of our court where an intervening decision from a state court of last resort has ‘undercut the theory or reasoning underlying the prior circuit precedent in such a way that the cases are clearly irreconcilable.’”). In that case, “a panel is free to act disregarding that precedent.” *Plouffe*, 445 F.3d at 1127.

5. **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: Under 28 U.S.C. § 455, a judge must disqualify himself “[w]here in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it[.]” Whether I would recuse myself in other circumstances in cases involving former clients, I would evaluate on a case-by-case basis to determine whether my “impartiality might reasonably be questioned.” 28 U.S.C. § 455.

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

Response: It would not be appropriate for a court of appeals judge to ignore or disregard controlling Supreme Court precedent or a Supreme Court order in a case.

7. In *United States v. Virginia*, 518 U.S. 515, 536 (1996), the Court explained that in 1839, when the Virginia Military Institute was established, “[h]igher education at the time was considered dangerous for women,” a view widely rejected today. In *Obergefell v. Hodges*, 576 U.S. 644, 668 (2015), the Court reasoned, “As all parties agree, many same-sex couples provide loving and nurturing homes to their children, whether biological or adopted. And hundreds of thousands of children are presently being raised by such couples. . . . Excluding same-sex couples from marriage thus conflicts with a central premise of the right to marry. Without the recognition, stability, and predictability marriage offers, their children suffer the stigma of knowing their families are somehow lesser.” This conclusion rejects arguments made by campaigns to prohibit same-sex marriage based on the purported negative impact of such marriages on children.

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

Response: If confirmed as a court of appeals judge, I would adhere to precedent of the Supreme Court and the Ninth Circuit governing the consideration of such evidence.

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

Response: Federal Rule of Evidence 702 governs the admissibility of scientific, technical, or other specialized knowledge. If confirmed, I would apply relevant precedent of the Supreme Court and the Ninth Circuit in considering the role of such evidence.

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

Response: If confirmed, I would consult any relevant precedent in evaluating whether and what type of remedy may exist in such an instance.

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

Response: The 22nd Amendment states in relevant part that “[n]o person shall be elected to the office of the President more than twice[.]” To the extent this question seeks an opinion on how the Amendment would be applied to a particular case that could come before me, it would be inappropriate for me as a judicial nominee to answer.

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

Response: President Biden was certified as having won the 2020 presidential election and served as the 46th President of the United States. To the extent this question seeks an opinion on the political or policy debates surrounding the conduct of the 2020 presidential election, it would be inappropriate for me as a judicial nominee to provide one.

11. 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: As a judicial nominee, I cannot comment on this question without risking violating the judicial code of conduct, as the question implicates political and policy issues that are the subject of controversy and debate.

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

Response: As a judicial nominee, I cannot comment on this question without risking violating the judicial code of conduct, as the question implicates political and policy issues that are the subject of current controversy and debate.

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

Response: It would not be appropriate for me as a judicial nominee to opine on what I would do as President in exercising the pardon power. *See* Const., art. II, section 2, clause 1.

14. 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: Under Supreme Court precedent, if the expressed viewpoint does not fall into a category of speech excluded from constitutional protection under the First Amendment, the government generally cannot engage in viewpoint discrimination. Consistent with the judicial code of conduct, however, I cannot comment on how those legal principles would apply to the posited hypothetical because such a case may come before me.

15. 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: This question implicates present political controversies and could arise in a case before me if I were confirmed. Consistent with the conduct of conduct, and as a judicial nominee, I therefore cannot comment on it.

16. 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: This question implicates present political controversies and could arise in a case before me if I were confirmed. Consistent with the conduct of conduct, and as a judicial nominee, I therefore cannot comment on it.

17. 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 held that the Constitution protects the use of contraceptives. *Griswold v. Connecticut*, 381 U.S. 479, 485 (1965). That precedent is binding on court of appeals judges.

- 18. 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: This question presents an issue that has been the subject of litigation. Under the judicial code of conduct, it would be inappropriate for me to offer any forecasts or hints as to how I would decide the issue if it were to come before me.

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

Response: The Due Process Clause of the Fifth Amendment provides that “[n]o person shall . . . be deprived of life, liberty, or property, without due process of law.” Whether this Clause applies is usually less of a question than how much process is due. If confirmed, I would adhere to binding precedent on this issue.

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

Response: I would adhere to Supreme Court precedent in determining whether the original understanding of the scope of a constitutional provision constrains its application.

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

Response: See Response to Question 20.

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

Response: Judges are to resolve cases and controversies in accordance with the law as written and binding precedent—not in accordance with their own personal views of morality or policy.

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

Response: A judge is to resolve cases and controversies in accordance with the law as written and binding precedent, even if the resulting practical consequences might not be to the judge’s liking as a personal policy preference. Practical considerations may come into play when the law authorizes such considerations, such as in deciding the scope or propriety of injunctive relief, where a judge assesses the irreparability of harm, the balance of harms, and the public interest.

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

Response: A judge should treat all parties with respect.

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

Response: A judge's life experience should hopefully have prepared him or her to decide cases fairly and with integrity.

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

Response: A party can seek to stay an order pursuant to Federal Rule of Civil Procedure 62. There may also be instances in which a party's only path to appealing an order is to not comply with it. *See Mohawk Industries, Inc. v. Carpenter*, 558 U.S. 100, 111 (2009). At this moment, beyond those situations and unless there is law directing otherwise, I cannot contemplate a situation in which I would inform parties before me that they do not need to comply with orders I would issue.

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

Response: See Response to Question 26.

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

Response: See Response to Question 26.

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

Response: An en banc court of the Ninth Circuit can reconsider a panel decision if a majority of active, non-recused judges vote to do so. *See* General Orders of the Ninth Cir. 5.1. Some considerations that could warrant en banc review include: (1) whether the panel decision conflicts with another Ninth Circuit decision; (2) whether the panel decision conflicts with a Supreme Court decision; (3) whether the panel decision conflicts with an authoritative decision of another United States court of appeals; or (4) whether the proceeding involves one or more questions of exceptional importance. *See* Fed. R. App. Proc. 40(b)(2).

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

Response: I have worked with several colleagues in the legal profession who embody the highest standards of professional responsibility and ethics and would serve as sound role models.

29. Discuss your proposed hiring process for law clerks.

Response: If confirmed, I intend to review applications that are submitted to my chambers and will seek to ensure that the most qualified candidates are hired.

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

Response: It would not be appropriate for me, as a judicial nominee, to comment on a policy proposal.

30. 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 that 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: No one should be subjected to workplace misconduct and everyone should be treated with respect. If confirmed, I would do my best to ensure that all members of my staff (including clerks and judicial assistants) are treated with dignity and respect.

- 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: See above.

- 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: See above.

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

Response: The Supreme Court in *Saenz v. Roe* has stated that the “‘constitutional right to travel from one State to another’ is firmly embedded in our jurisprudence.” 526 U.S. 489, 498 (1999) (quoting *United States v. Guest*, 383 U.S. 745, 757 (1966)).

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

Response: The answer to this question would depend on the specific facts of the purported restriction, and it would not be appropriate for me as a judicial nominee to comment on how the general legal principles protecting a constitutional right to travel would apply to specific facts.

32. **Do you agree that the Supremacy Clause of the Constitution establishes that federal laws supersede conflicting state laws?**

Response: Yes.

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

Response: The Supreme Court has stated that there is a constitutional right to privacy in certain contexts—such as the right to use contraceptives, *see Griswold v. Connecticut*, 381 U.S. 479 (1965), and the right to certain intimate conduct between members of the same sex, *see Lawrence v. Texas*, 539 U.S. 558 (2003).

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

Response: As a judicial nominee, I cannot comment on whether any preexisting right should be extended to different contexts. If confirmed, I would follow Supreme Court and Ninth Circuit precedent addressing the issue.

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

Response: See above.

34. During Senator Booker’s questioning, he asked you whether you agreed with Mike Davis’s statement that Democrats are “relentless and evil.” You declined to answer stating, “Senator, you’re asking me to comment on a political question and, as a nominee to a judicial position, I cannot and should not speculate or comment on that.” Senator Booker pressed you again and you declined again, stating, “Senator, you’re asking a personal and policy-laden question that I cannot answer as a nominee.”

Senator Kennedy then intervened, asking, “You really don’t think that somebody’s evil just because of the party they’re in in America, do you?” You replied, “I don’t think that, Senator.” He later asked, “And you don’t think Democrats are evil, do you?” You replied, “Senator, I do not

a. Why did you refuse to answer the question when Senator Booker asked you whether you thought Democrats were evil?

Response: I understood Senator Booker’s question as asking whether I agreed or disagreed with public comments made by Mr. Davis. Those statements concerned the conduct of political figures and related political controversies, including the conduct of political figures surrounding the nominations and confirmations of Justice Gorsuch and Justice Kavanaugh. Consistent with the judicial code of conduct, I could not weigh in on comments of a political nature made by another. By contrast, Senator Kennedy’s question did not seek to elicit an opinion as to whether I agreed or disagreed with certain comments made by Mr. Davis.

b. Why did you agree to answer the question when Senator Kennedy asked you whether you thought Democrats were evil?

Response: See above.

c. Do you believe that Democrats are evil?

Response: I do not believe that a person is evil just because of his or her party affiliation.

- a. Do you believe that anyone is evil because of their political affiliation?**

Response: See above.

Nomination of Eric Tung
Nominee to be U.S. Circuit Judge for the Ninth Circuit
Questions for the Record
Submitted August 6, 2025

QUESTIONS FROM SENATOR CORY A. BOOKER

1. In response to Judiciary Committee members' questions about your writings in your college newspaper, you answered that you could not comment on the substance of those writings because they implicated "live issues."

a. Are there any written statements you have published or public statements you have made in the past that you now wish to retract?

Response: The written or public statements that some of the members of the Senate Judiciary Committee referred to during the hearing were statements made approximately 20 years ago when I was an undergraduate in college. Any personal or political views reflected in those statements would have no bearing on how I would decide cases if I were confirmed as a judge. Moreover, this question seeks to elicit from me my current views concerning those statements. But pursuant to the judicial code of conduct, it would be inappropriate for me as a judicial nominee to answer.

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

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

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

Response: Under the Code of Conduct, as a judicial nominee, I cannot comment on statements by any political figure or on any subject of political controversy.

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

Response: If I were confirmed as a federal appellate judge, I would strive faithfully to construe the Constitution and the laws of the United States when exercising the judicial

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

power in a case or controversy. *See* Const. Art. III. The power to be exercised by a judge in our system of government is distinct from the legislative power and the executive power—for “[w]ere the power of judging joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control” because “*the judge* would then be *the legislator*,” or “[w]ere it joined to the executive power, *the judge* might behave with all the violence of an *oppressor*.” The Federalist No. 47 (emphasis in original). Accordingly, I would subscribe to the judicial philosophy that, consistent with Article III, limits the role of a judge to be a neutral interpreter of the law, not the maker or executor of the laws, a role more appropriately belonging to the policymaking and political branches of our government.

4. What do you understand originalism to mean?

Response: Originalism is the method of interpreting the Constitution as it was understood by the people at the time of ratification.

5. Do you consider yourself an originalist?

Response: I consider myself bound by the Constitution and the laws of the United States and applicable precedent construing those laws.

6. What do you understand textualism to mean?

Response: Textualism is the method of interpreting a federal statute in accordance with its ordinary meaning at the time of enactment.

7. Do you consider yourself a textualist?

Response: I consider myself bound by the Constitution and the laws of the United States and applicable precedent construing those laws.

8. 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: Legislative history as defined above is not duly enacted law satisfying the bicameralism and presentment requirements of Article I, Section 7. If I were confirmed, I would consider in a case or controversy the arguments made and authorities cited by the parties in analyzing or interpreting a duly enacted federal statute to the extent those arguments and authorities bear on the statute’s meaning.

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

Response: See Response to Question 8.a.

9. 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.²

a. What do you attribute this to?

Response: This question implicates matters of policy that would be improper for me as a judicial nominee to comment on consistent with the Code of Conduct.

10. 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.³

a. What do you attribute this to?

Response: See Response to Question 9.a.

- 11. 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: "[T]he 'core purpose' of the Equal Protection Clause is 'do[ing] away with all governmentally imposed discrimination based on race.'" *Students for Fair Admissions v. President and Fellows of Harvard College*, 600 U.S. 181, 206 (2023) (citation omitted). In a case presenting the question of whether government officials (including prosecutors) engaged in race discrimination, a federal judge would be required to uphold the Clause's command.

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

Response: No one should be denied work in the judicial branch on account of his or her race, and each should be afforded equal opportunity to pursue such work.

13. 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.

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

³ 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.

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: On September 15, 2015, the Los Angeles Daily Journal published an article I had written entitled, *If we don't look to original meaning, what else is there?* In that article, I wrote about the role of judges, the method of constitutional interpretation known as originalism, and whether for an originalist there would be a constitutional prohibition against abortion. On March 5, 2025, I appeared on a panel ("Constitutional Crossroads: A Debate on Interpreting the Law"), hosted by the Federalist Society at UCLA School of Law in Los Angeles, California. As part of that panel, I provided certain remarks about how an originalist would approach the question of whether there is a constitutional right to an abortion.

b. Affirmative action

Response: On January 24, 2003, while I was in college, I wrote a post on a blog for the Yale Free Press entitled "Disappointing" that addressed the topic of affirmative action and the importance of evaluating merit in college admissions.

c. Contraceptives or birth control

Response: None.

d. Gender-affirming care

Response: On March 5, 2025, I appeared on a panel ("Constitutional Crossroads: A Debate on Interpreting the Law"), hosted by the Federalist Society at UCLA School of Law in Los Angeles, California. As part of that panel, I provided certain remarks about how an originalist would approach the question of whether there is a constitutional right to transgender procedures.

e. Firearms

Response: None.

f. Immigration

Response: None.

g. Same-sex marriage

Response: On March 5, 2025, I appeared on a panel ("Constitutional Crossroads: A Debate on Interpreting the Law"), hosted by the Federalist Society at UCLA School

of Law in Los Angeles, California. As part of that panel, I provided certain remarks about how an originalist would approach the question of whether there is a constitutional right to same-sex marriage.

h. Miscegenation

Response: None.

i. Participation of transgender people in sports

Response: None.

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

Response: None.

k. Racial discrimination

Response: See Response to Question 13.b.

l. Sex discrimination

Response: None.

m. Religious discrimination

Response: On March 29, 2025, I appeared on a panel (“Has the Right Lost the Argument for Small Government?”), hosted by the Federalist Society in Simi Valley, California. As part of that panel, I provided certain remarks about laws that supported human dignity and worth, such as laws that support and protect religion or laws that, when affording public benefits, treat religious institutions equally with secular institutions and that do not seek to suppress or discriminate against religion.

n. Disability discrimination

Response: None.

o. Climate change or environmental disasters

Response: In October 2004, the Yale Free Press published an article that I had written entitled, *Seeing the Forest for the Trees*, in which I discussed China’s environmental problems. In November 2004, the Yale Free Press published my response to a letter to the editor related to my October 2004 article. In that response, I discuss obligations to care for our environment and the importance of property rights.

- p. “DEI” or Diversity Equity and Inclusion

Response: See Response to Question 13.b.

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

- 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: I would apply binding precedent of the Supreme Court and the Ninth Circuit to determine whether to issue a contempt order in such a circumstance. That precedent has recognized that courts have the inherent contempt authority while also cautioning that the exercise of such power must be taken with great care as it risks fusing the “legislative, executive, and judicial powers” and raises “the prospect of ‘the most tyrannical licentiousness,’” *Int’l Union, United Mine Workers of Am.*, 512 U.S. at 831 (quoting *Young v. United States ex rel. Vuitton et Fils S.A.*, 481 U.S. 787, 822 (1987) (Scalia, J., concurring in the judgment)). Pursuant to the Code of Conduct, and as a judicial nominee, I cannot comment on any ongoing litigation or subject of political controversy that is implicated by this question.

- 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: As a general matter, a party to a case is bound by an order issued by the judge, and the typical course is for the party to seek appellate review if the party disputes the outcome. Some have addressed various potential exceptions to that general rule, as prior nominees have pointed out. For instance, a party might avoid a finding of contempt for not complying with an order when it would have been “factually impossible” to do so, *United States v. Rylander*, 460 U.S. 752, 757 (1983), and indeed, incurring contempt might in some limited instances be the only path to appeal, *Mohawk Industries, Inc. v. Carpenter*, 558 U.S. 100, 111 (2009). *See also* 17 Corpus Juris Secundum Contempt §§ 56, 58-65 (addressing other “defenses to contempt”). Because a case involving this issue could come before me if I were confirmed, it would be improper for me to comment further.

15. 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. U.S. Const. art. I, § 7, cl. 2. Under the Take Care Clause, the President also “shall take Care that the Laws be faithfully executed,” art. II, § 3, cl. 5—authority that embraces the “enforcement of federal . . . laws passed by Congress,” *Trump v. United States*, 603 U.S. 593, 627 (2024), including by “mak[ing] arrests and prosecut[ing] offenses on behalf of the United States,” *United States v. Texas*, 599 U.S. 670, 678-79 (2023). The Supreme Court has

recognized that executive officials have substantial (but not unlimited) discretion in deciding which cases to prosecute and how and when certain laws are to be enforced. *See, e.g., Texas*, 599 U.S. at 679. To the extent this question implicates live issues or current controversies, as a judicial nominee, I cannot provide any further comment.

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

Response: The Supreme Court’s decision in *Train v. City of New York*, 420 U.S. 35 (1975), and the Impoundment Control Act of 1974 (2 U.S.C. § 681 *et seq.*), address this issue. To the extent this question implicates any live controversy or legal dispute, it would be inappropriate for me to comment on it consistent with the judicial code of conduct.

17. 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: See Response to Question 16.

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

Response: Yes.

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

Response: The Due Process Clause of the Fifth Amendment provides that “[n]o person shall . . . be deprived of life, liberty, or property, without due process of law.” Whether this Clause applies is usually less of a question than how much process is due. If confirmed, I would adhere to binding precedent on this issue.

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

Response: The Supreme Court has held that the Constitution “permits no delegation” of legislative power, but that no delegation has occurred when Congress “lay[s] down by legislative act an intelligible principle to which the person or body authorized to act is directed to conform.” *Whitman v. American Trucking*, 531 U.S. 457, 472 (2001) (brackets omitted). There has been more recent precedent applying the intelligible-principle test, *see generally, e.g., Gundy v. United States*, 588 U.S. 128 (2019) and *FCC v. Consumers’ Rsch.*, 145 S. Ct. 2482 (2025), and if I were confirmed, I would consult these and other related precedents in addressing a case or controversy implicating this issue.

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

Response: Generally, a judicial nominee should not grade or give a thumbs-up or thumbs-down to particular cases of the Supreme Court. Prior judicial nominees, however, have

considered *Brown* to be an exception to that general rule, stating that *Brown* was correctly decided. Consistent with that practice, I agree that *Brown*, in rejecting state-sanctioned racial discrimination, was correctly decided.

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

Response: *Griswold* is binding precedent. There, the Court held that a Connecticut statute penalizing the use of contraceptives violated the Fourteenth Amendment's Due Process Clause.

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

Response: *Lawrence* is binding precedent. There, the Court held that a Texas law making it a crime for two persons of the same sex to engage in certain intimate conduct violated the Fourteenth Amendment's Due Process Clause.

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

Response: *Obergefell* is binding precedent. There, the Court held that State laws defining marriage as a union between one man and one woman violated the Fourteenth Amendment and that the Fourteenth Amendment required a State to license a marriage between two people of the same sex.

25. 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 having won the 2020 presidential election and served as the 46th President of the United States. To the extent this question seeks an opinion on the political or policy debates surrounding the conduct of the 2020 presidential election, it would be inappropriate for me as a judicial nominee to provide one.

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

Response: See Response to Question 25.

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: See Response to Question 25.

26. The 22nd Amendment says that "no person shall be elected to the office of the President more than twice."⁴

⁴ U.S. CONST. amend. XXII.

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

Response: Yes.

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

Response: See Response to Question 26.a.

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

Response: Yes.

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

Response: See response to Question 26.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 states in relevant part that “[n]o person shall be elected to the office of the President more than twice[.]” To the extent this question seeks an opinion on how the Amendment would be applied to a particular case that could come before me, it would be inappropriate for me as a judicial nominee to answer.

- 27. 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.

- 28. 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.

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

Response: I have known James Burnham since our time in law school, and we have been colleagues at Jones Day. Since November 2024, we have occasionally corresponded by phone regarding personal matters unrelated to DOGE.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.

35. 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.

36. 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.

37. 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.

Response: No, to all of the below.

- a. Enrique Tarrio
- b. Stewart Rhodes
- c. Kelly Meggs

- d. Kenneth Harrelson
- e. Thomas Caldwell
- f. Jessica Watkins
- g. Roberto Minuta
- h. Edward Vallejo
- i. David Moerschel
- j. Joseph Hackett
- k. Ethan Nordean
- l. Joseph Biggs
- m. Zachary Rehl
- n. Dominic Pezzola
- o. Jeremy Bertino
- p. Julian Khater

38. 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.

39. 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: I so affirm.

40. 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.

41. 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.”⁵

- a. During the hearing on your nomination, we discussed the above statement and you ultimately conceded to Senator Kennedy that you do not agree with Mr. Davis that Democrats are “evil.” Please clarify: Do you agree with any portion of the above statement?**

Response: Respectfully, I understood your question to be asking for me to comment on, among other things, the conduct of political figures and related political controversies, including the conduct of political figures surrounding the nominations and confirmations of Justice Gorsuch and Justice Kavanaugh. Consistent with the positions taken by other nominees, it would be inappropriate for me, as a pending judicial nominee, to comment on the statements of political figures or political controversies. *See* Code of Conduct of U.S. Judges, Canons 3(A)(6), 5. I understood Senator Kennedy to be asking about party affiliation generally and not the conduct of political figures involved in those political controversies. As a judicial nominee, I did not and could not opine on whether I agreed or disagreed with a public statement made by Mr. Davis. To the extent your question seeks such an opinion now, I cannot provide one consistent with the judicial code of conduct.

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

Response: No.

- a. Who?**

Response: Not applicable.

- b. What advice did they give?**

Response: Not applicable.

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

Response: Not applicable.

- 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: No.

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

44. During the century before President Trump's first term, the Senate had *never* confirmed a judicial nominee over the objections of *both* home-state Senators, according to the Congressional Research Service.⁶ The departure from that longstanding Senate tradition of respect for the views of home-state Senators through the blue slip process first occurred in 2017 during the first Trump Administration.⁷

a. Do you think the Trump Administration meaningfully consulted with your home-state Senators about your nomination?

Response: As a judicial nominee, I defer to the President and the Senate to determine the consultation process used in nominations. As stated in my Senate Judiciary Committee Questionnaire, on May 19, 2025, Senator Alex Padilla's staff reached out to me to schedule an interview. On May 21, 2025, I interviewed (virtually) with two members of Senator Padilla's staff and provided them biographical information upon their request. On June 3, Senator Padilla's staff informed me that it planned to share my materials with Senator Adam Schiff's office, which was conducting a review of my candidacy for nomination to the U.S. Court of Appeals for the Ninth Circuit. Asked if I had any concerns about that, I said no. On June 5, 2025, Senator Padilla's staff informed me that Senator Padilla would like to interview me. On June 10, 2025, I interviewed with Senator Padilla over Zoom. Before the July 30, 2025 confirmation hearing, neither Senator Schiff nor his staff reached out to me to discuss my candidacy.

b. Did you indicate any objection or concerns to anyone in the Administration or on the majority side of the Senate Judiciary Committee about consultations with your home-state Senators? If yes, describe the content of that communication and identify to whom it was communicated.

Response: I did not indicate any such objection or concerns.

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

Response: As stated in my Senate Judiciary Committee Questionnaire, on March 28, 2025, I was contacted by the White House Counsel's Office and was asked if I would be interested in being considered as a candidate for nomination to the U.S. Court of Appeals for the Ninth Circuit. I answered in the affirmative and, upon request, I provided the White House Counsel's Office with basic biographical information. The White House Counsel's Office scheduled an interview for April 8, 2025. On that day, I interviewed with attorneys from the White House and the Department of Justice in Washington, District of Columbia. On June 19, 2025, the White House Counsel's Office informed me that it would like to arrange a

⁶ See generally BARRY J. McMILLION, CONG. RESEARCH SERV., R44975, THE BLUE SLIP PROCESS FOR U.S. CIRCUIT AND DISTRICT COURT NOMINATIONS (2023), <http://www.crs.gov/Reports/pdf/R44975>.

⁷ *Id.* at 12.

meeting between President Donald Trump and me regarding the nomination. On July 2, 2025, I met with President Trump about my potential nomination, and later that day, President Trump publicly announced his intent to nominate me. Throughout this period, I have been in contact with officials from the White House Counsel's Office and the Department of Justice's Office of Legal Policy.

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

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

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

July 30, 2025

Questions for Mr. Tung:

- 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: As a general matter, a party to a case is bound by an order issued by the judge, and the typical course is for the party to seek appellate review if the party disputes the outcome. Some have addressed various potential exceptions to that general rule, as prior nominees have pointed out. For instance, a party might avoid a finding of contempt for not complying with an order when it would have been “factually impossible” to do so, *United States v. Rylander*, 460 U.S. 752, 757 (1983), and indeed, incurring contempt might in some limited instances be the only path to appeal, *Mohawk Industries, Inc. v. Carpenter*, 558 U.S. 100, 111 (2009). *See also* 17 Corpus Juris Secundum Contempt §§ 56, 58-65 (addressing other “defenses to contempt”). Because a case involving this issue could come before me if I were confirmed, it would be improper for me to comment further.

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

Response: Please see above.

- 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: A person’s political speech is generally protected by the First Amendment. To the extent the question asks how I would apply general legal principles to a specific set of facts, it would be inappropriate for me to comment on that as a judicial nominee.

- 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.

- 5. While announcing your nomination on Truth Social, President Trump referred to California, Oregon, and Washington—states that sit in the Ninth Circuit—as “the most RADICAL, Leftist States.”**

- a. **Do you agree that California—your home state—as well as Washington and Oregon, whose people you are asking to serve as a Ninth Circuit judge, are “RADICAL, Leftist States”?**

Response: This questions seeks to elicit an opinion concerning public statements made by the President. Consistent with the judicial code of conduct, and as a nominee, I cannot provide such an opinion.

- b. **Do you think it’s appropriate for the President to post something like that about American states when making an official announcement about a lifetime appointment to the judiciary?**

Response: This questions seeks to elicit an opinion concerning public statements made by the President. Consistent with the judicial code of conduct, and as a nominee, I cannot provide such an opinion.

- c. **When you met with President Trump to discuss your nomination, did you say anything about his comments concerning California?**

Response: No.

6. At your confirmation hearing, you declined to respond to my questions about your beliefs about gender roles, arguing that that is “the subject of wide debate.”

- a. **Is the question of whether so-called “gender roles” are binding on women a live legal question before the courts?**

Response: Courts frequently adjudicate cases relating to gender (for instance, under Title VII, Title IX, and the Equal Protection Clause). If confirmed, there will be cases that come before me that implicate questions relating to gender. Moreover, the topic of gender is the subject of political debate. Under Canons 3 and 5 of the Code of Conduct for United States Judges, I could not respond to questions relating to “beliefs about gender roles” during the hearing.

- b. **Please cite the judicial canon that prevented you from responding to my question in Committee.**

Response: See above.

- c. **Do you believe that there are roles to which each gender is more inherently suited and, if so, what are those roles?**

Response: See above.

- d. **Please provide a list of the things that you believe women are “simply better at” than men.**

Response: See above.

- e. In what ways do you believe that feminism interferes with the institution of marriage?**

Response: See above.

- f. What steps will you take to reassure women applying to clerk in your chambers that you believe in their personal professional equality with men?**

Response: No one should be denied a clerkship on account of gender.

7. At your confirmation hearing, you declined to take the opportunity to recant your previous statements about gender equality and organized labor.

- a. Do you recant your statements about gender roles and gender equality?**

Response: This question seeks to elicit to opinion from me regarding a political topic that is the subject of debate. As discussed above, it would be inappropriate for me as a judicial nominee to provide such an opinion.

- b. Do you recant your statements about organized labor?**

Response: See above.

- c. You appeared in a photo holding a sign that says “Union NO.” Beside you is a man holding a sign saying “Workers of the world get back to work.” Do you agree with these statements?**

Response: See above.