

Senator Dick Durbin
Ranking Member, Senate Judiciary Committee
Written Questions for Andrew Bray Davis
Nominee to be U.S. District Judge for the Western District of Texas
February 11, 2026

1. You have been very critical—both in briefs and public commentary—of private rights of action, including the *qui tam* provisions in the False Claims Act (FCA), which has been championed by Chairman Grassley for many years. Indeed, you have characterized *qui tam* actions as unconstitutional. Whistleblowers who bring *qui tam* actions play an important role in holding those who defraud the government accountable. In FY 2025, the Justice Department reported \$6.8 billion in total FCA settlements and judgments. *Qui tam* actions comprised a significant percentage of those cases, yielding over \$5.3 billion in recoveries. If you are confirmed to the federal bench, *qui tam* cases may come before you.

a. Do you believe whistleblowers play an important role in holding those who defraud the government accountable?

Response: Yes.

In response to Senator Whitehouse at your hearing, you claimed that should a *qui tam* action come before you on the bench, you would follow binding *en banc* precedent in the Fifth Circuit. However, in *Zafirov v. Florida Medical Associates LLC*, you filed an amicus brief in the Eleventh Circuit arguing that the appellate court should affirm the district court’s ruling. In that case, U.S. District Judge Kathryn Mizelle held that *qui tam* actions were unconstitutional, seemingly becoming the first district court in the country to do so.

b. Considering your record, why should anyone bringing a *qui tam* claim have confidence that you will treat them fairly and follow precedent within your own circuit if you are confirmed to serve as a federal judge?

Response: While I have argued on behalf of clients as an advocate that the *qui tam* provision of the False Claims Act is unconstitutional, the role of a judge is different from that of an advocate. If confirmed, I would faithfully apply the Constitution and all binding precedent of the Supreme Court and the Fifth Circuit. The Fifth Circuit has held that the False Claims Act’s *qui tam* provision is constitutional. *See Riley v. St. Luke’s Episcopal Hosp.*, 252 F.3d 749 (5th Cir. 2001) (en banc). *Riley* is binding on all courts in the Fifth Circuit, including the Western District of Texas, and I would faithfully follow it. *Riley* is not binding precedent in the Eleventh Circuit, the court in which I filed the amicus brief referenced by this question, or the Middle District of Florida, the court on which Judge Mizelle sits.

2. As a college student, you wrote an opinion piece 20 years ago in which you defended racist commentary from conservative pundit and former Republican official Bill Bennett, who said: “I do know that it’s true that if you wanted to reduce crime, you could, if that were your sole purpose, you could abort every black baby in this country, and your crime rate would go down.” You defended the statement as, “outrageous and inflammatory, but essentially accurate” and said Bennett “use[d] race to make this argument so outrageous that people would have to pay attention.”

- a. **Do you stand by your statement that Mr. Bennett’s commentary was “essentially accurate?”**

Response: This article was written when I was 19 years old, condemned racial discrimination, and, as the question recognizes, characterized Mr. Bennett’s argument as “outrageous and inflammatory.” Although many of my political and policy views have changed in the two decades since I wrote this article, I continue to condemn and abhor racism and discrimination in all its forms.

With respect to the accuracy of Mr. Bennett’s statements, I have not studied the issue and am therefore not positioned to offer a view. Indeed, when I wrote the above-mentioned article, I was not properly positioned to offer a view and, in reflection, should not have done so. Moreover, because opining on the accuracy of Mr. Bennett’s statements could reasonably be viewed as offering a view on a political or policy issue, the Code of Conduct for U.S. Judges prohibits me from doing so.

- b. **Do you disavow your previous comments defending Mr. Bennett?**

Response: Please see my response to Question 2(a).

3. You defended Fox News in a defamation suit brought by Dominion Voting Systems, who alleged that several Fox News Network personalities made false statements about Dominion’s voting machines being rigged to steal the 2020 election. In your Questionnaire, you stated that among other things, you were responsible for managing the case for your firm on a day-to-day basis with respect to coordinating discovery. On April 12, 2023, the Delaware state judge presiding over the case criticized the firms representing Fox News, including your firm, for dragging their feet on document production. For example, Dominion’s counsel noted that Fox News had produced several thousand emails from host Maria Bartiromo just before trial was set to begin, only after Fox News revealed that Bartiromo’s personal phone—which had emails from conspiracy theorist Sidney Powell—had not been searched earlier. Dominion also argued that it had not been fully notified of recordings on the phone of a Fox News producer, Abby Grossberg, who was fired shortly after submitting an errata sheet in which she had sought to change answers she had given during a fall 2022 deposition.

- a. **Do you believe that it is important for parties to timely produce documents during the discovery process?**

Response: Yes.

b. Did you recommend that Fox News drag its feet on producing documents to Dominion Voting Systems?

Response: I respectfully disagree with this characterization of Fox News's document production. I have always counseled clients to follow the law, including discovery obligations.

4. Did President Trump lose the 2020 election?

Response: Joe Biden was certified as the winner of the 2020 election.

5. Where were you on January 6, 2021?

Response: I was in Senator Cruz's personal office in the Russell Senate Office Building pursuant to my duties as Senator Cruz's Chief Counsel.

6. Do you denounce the January 6 insurrection?

Response: This question calls for a response that could be seen as opining on political matters or potential future cases, and I cannot provide such an answer consistent with my ethical obligations as a judicial nominee. *See* Code of Conduct of U.S. Judges, Canons 3(A)(6), 5.

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

Response: Whether the President should issue a pardon is a political issue within the discretion of the President. It would thus be inappropriate for me, as a nominee to the district court, to weigh in on the propriety of any pardon. *See* Code of Conduct for U.S. Judges, Canon 5.

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

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

Response: A party that disagrees with a court order has multiple options, including a motion for reconsideration, a motion for a stay, and an appeal.

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

Response: As a general matter, federal court orders must be obeyed unless and until they are stayed, vacated, or reversed through established legal processes. Courts have recognized very narrow circumstances in which noncompliance may be raised as a defense in subsequent proceedings, such as where the issuing court lacked jurisdiction or where compliance was impossible. *See, e.g., Shillitani v. United States*, 384 U.S. 364 (1966). The Supreme Court has also recognized that, in limited circumstances, a party may choose to incur contempt sanctions in order to obtain appellate review. *See Mohawk Industries, Inc. v. Carpenter*, 558 U.S. 100 (2009).

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

Response: Each government official in each branch takes an oath to uphold the Constitution and the laws of the United States. The Supreme Court, however, has held that it is the “province and duty of the Judicial Department to say what the law is.” *Marbury v. Madison*, 5 U.S. 137, 177 (1803).

9. 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*, 145 S. Ct. 2540 (2025), the Supreme Court held that “[a] universal injunction can be justified only as an exercise of equitable authority, yet Congress has granted federal courts no such power.” *Id.* at 2550. The Court’s decision, however, was statutorily-based and did not resolve whether universal relief would violate the Constitution. If confirmed, I would follow all precedent, including *CASA* and any Fifth Circuit precedent addressing the constitutional issue. Under the Code of Conduct for United States Judges, it would be inappropriate for me to weigh in further on the constitutional question as the issue could come before me if I am confirmed. *See* Code of Conduct of U.S. Judges, Canons 3(A)(6).

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

Response: Please see my response to Question 9(a).

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

Response: Please see my response to Question 9(a).

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

Response: I do not believe I have ever sought a non-party injunction of the form addressed in *CASA*. I have participated in matters seeking to set aside agency action under the Administrative Procedure Act. *See* 5 U.S.C. § 706(2).

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

Response: No.

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

Response: The Twenty-Second Amendment to the Constitution states that “[n]o person shall be elected to the office of the President more than twice.”

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

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

Response: It would be inappropriate for me to offer an opinion on these statements regarding political controversies and ongoing litigation. *See* Code of Code of Conduct of U.S. Judges, Canons 3(A)(6), 5.

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

Response: Please see my response to Question 12(a).

13. In addition to the President’s own attacks on judges, his adviser Stephen Miller took to social media to call a federal trade court’s ruling against President Trump’s tariffs a “judicial coup”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, 7:22 AM), <https://truthsocial.com/@realDonaldTrump/posts/114573871728757682>.

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

³ Stephen Miller (@StephenM), X, (May 29, 2025, 8:25 AM), <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: It would be inappropriate for me to offer an opinion on these statements regarding political controversies and ongoing litigation. *See* Code of Code of Conduct of U.S. Judges, Canons 3(A)(6), 5.

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

Response: Please see my response to Question 13(a).

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

Response: Please see my response to Question 13(a).

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

Response: It is never appropriate for a lower court to depart from Supreme Court precedent.

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

Response: The decision to overturn circuit court precedent resides with the judges of that circuit who may convene *en banc*. If I am confirmed as a district court judge, I would have no role in that decision.

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

Response: The decision to overrule Supreme Court precedent resides with the justices of the Supreme Court. If I am confirmed as a district court judge, I would have no role in that decision.

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

- a. *Brown v. Board of Education*
- b. *Plyler v. Doe*
- c. *Loving v. Virginia*
- d. *Griswold v. Connecticut*
- e. *Trump v. United States*
- f. *Dobbs v. Jackson Women’s Health Organization*
- g. *New York State Rifle & Pistol Association, Inc. v. Bruen*

- h. *Obergefell v. Hodges*
- i. *Bostock v. Clayton County*
- j. *Masterpiece Cakeshop v. Colorado*
- k. *303 Creative LLC v. Elenis*
- l. *United States v. Rahimi*
- m. *Loper Bright Enterprises v. Raimondo*

Response: If confirmed, I would fairly and faithfully follow all Supreme Court precedent. Although it is generally inappropriate for a nominee to offer a view on whether any Supreme Court precedent was correctly decided, numerous previous nominees have made exceptions for two of the above cases: *Brown v. Board of Education* and *Loving v. Virginia*. Consistent with that approach, I believe it is appropriate to offer my view that both *Brown* and *Loving* were correctly decided.

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

Response: If confirmed as a district judge, I will interpret any constitutional provision before me as required by Supreme Court and Fifth Circuit precedent. Many of those precedents have relied on the original meaning of the Constitution. *See, e.g., New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022); *Crawford v. Washington*, 541 U.S. 36 (2004).

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

Response: Please see my response to Question 18.

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

Response: The Supreme Court in *Obergefell v. Hodges*, 576 U.S. 644 (2015), recognized a constitutional right to same-sex marriage. *Obergefell* is binding precedent and, if confirmed, I will fairly and faithfully follow it.

21. 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*, 388 U.S. 1 (1967), recognized a constitutional right to marry persons of a different race. *Loving* is binding precedent and, if confirmed, I will fairly and faithfully follow it.

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

Response: The Equal Protection Clause states that no State shall “deny to any person within its jurisdiction the equal protection of the law.” U.S. Const. amend. XIV § 1. The Supreme Court has construed this Clause to prohibit government action classifying individuals based on protected characteristics unless the law satisfies the appropriate level of scrutiny—most notably, strict scrutiny for race-based classifications and intermediate scrutiny for sex-based classifications. *See, e.g., Students for Fair Admission, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181 (2023); *United States v. Virginia*, 518 U.S. 515 (1996). “[I]f a law neither burdens a fundamental right nor targets a suspect class, [courts] will uphold the legislative classification so long as it bears a rational relation to some legitimate end.” *United States v. Skrametti*, 145 S. Ct. 1816, 1828 (2025).

The Due Process Clause states that no State shall “deprive any person of life, liberty, or property without due process of law.” U.S. Const. amend. XIV § 1. The Supreme Court has construed this Clause to include both a procedural and a substantive component. The procedural component, aptly referred to as procedural due process, requires affording certain basic procedural protections before government action can deprive a person of life, liberty or property, with the amount of process due depending on the circumstances. *See, e.g., Matthews v. Eldridge*, 424 U.S. 319 (1976). The substantive component protects substantive rights that are “objectively, deeply rooted in this Nation’s history and tradition.” *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 239 (2022) (quoting *Washington v. Glucksberg*, 521 US 702, 721 (1997)).

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

Response: As stated in my response to Question 22, the Supreme Court has held that sex-based classifications receive intermediate scrutiny. This means that “the State must show that the [sex-based] classification serves important governmental objectives and that the discriminatory means employed are substantially related to the achievement of those objectives.” *United States v. Skrametti*, 145 S. Ct. 1816, 1828-29 (2025) (quotation marks omitted). The Supreme Court has also applied the Due Process and Equal Protection Clauses to sexual orientation. *See, e.g., Obergefell v. Hodges*, 576 U.S. 644 (2015); *United States v. Windsor*, 570 U.S. 744 (2013); *Lawrence v. Texas*, 539 U.S. 558 (2003); *Romer v. Evans*, 517 U.S. 620 (1996).

If confirmed as a district judge, I will follow all binding precedent.

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

Response: Please see my response to Question 18.

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

Response: Please see my response to Question 18. To the extent this question calls for a response that could be seen as opining on political matters or potential future cases, I cannot provide such an answer consistent with my ethical obligations as a judicial nominee. *See* Code of Conduct of U.S. Judges, Canons 3(A)(6), 5.

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

Response: The First Amendment of the U.S. Constitution 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.” U.S. Const. amend. I. This has been interpreted to provide protections to a broad range of persons and entities, though with certain territorial and contextual limitations. *See, e.g., Agency for International Development v. Alliance for Open Society International, Inc.*, 591 U.S. 430 (2020); *Reed v. Town of Gilbert*, 576 U.S. 155 (2015); *Citizens United v. FEC*, 558 U.S. 310 (2010); *U.S. v. Verdugo-Urquidez*, 494 U.S. 259 (1990). If I am confirmed, I will faithfully follow all binding precedent from the U.S. Supreme Court and the Fifth Circuit addressing the First Amendment.

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

Response: The Supreme Court has stated that a “a law is content based on its face if it applies to particular speech because of the topic discussed or the idea or message expressed.” *TikTok Inc. v. Garland*, 604 U.S. 56, 70 (2025) (cleaned up). A law is content-neutral if it can be “justified without reference to the content of the regulated speech.” *Reed v. Town of Gilbert*, 576 U.S. 155, 166 (2015). If confirmed as a district judge, I will faithfully follow all Supreme Court and Fifth Circuit precedent addressing the First Amendment.

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

Response: The Supreme Court has stated that “true threats are serious expressions conveying that a speaker means to commit an act of unlawful violence.” *Counterman v. Colorado*, 600 U.S. 66, 74 (2023). The Supreme Court has also stated that true threats are a “historically unprotected category of communications.” *Id.* If confirmed as a district judge, I will faithfully follow all Supreme Court and Fifth Circuit precedent addressing the First Amendment.

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

Response: The Supreme Court has stated that “the Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). As

explained in my response to Question 22, due process is more often a question of how much process is due rather than whether process is due. To the extent this question asks about hypothetical cases or matters that are the subject of ongoing litigation, it would be improper for me as a judicial nominee to comment further. *See* Code of Conduct of U.S. Judges, Canon 3(A)(6).

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

Response: Please see my response to Question 29.

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

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

Response: I am aware that the above question has been the subject of recent litigation. As a result, this question calls for a response that could be seen as opining on political matters or potential future cases, and I cannot provide such an answer consistent with my ethical obligations as a judicial nominee. *See* Code of Conduct of U.S. Judges, Canons 3(A)(6), 5.

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

Response: Please see my response to Question 31(a).

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

Response: Anyone who wishes to serve in the judicial branch should be considered without regard to their race, sex, ethnicity, religion, or other protected characteristic. Diverse professional experience can contribute to valuable perspectives on the bench.

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

judges—both before and after sentencing—to ensure that the criminal justice system effectively and efficiently fosters public safety for the benefit of all Americans.

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

Response: As with any other federal law, the role of a federal judge is to faithfully interpret the law and apply it fairly and impartially to the facts of the case and controversy before him.

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: Yes, I will follow all applicable laws governing sentencing determinations, including 18 U.S.C. § 3553.

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

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

Response: I am not familiar with this statement, its context, or what the author meant by “traditional values.”

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?

Response: Because the question calls for a response that requires me to express an opinion on a political matter, it is impermissible for me, as a judicial nominee, to opine on this issue. *See* Code of Conduct of U.S. Court Judges, Canon 5.

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

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

Response: Please see my response to Question 34(b)(i).

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

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

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

Response: I do not know the full universe of persons associated with the Federalist Society, but I understand that there are thousands of members and I have multiple friends and acquaintances who are either members or officers of the Federalist Society. Accordingly, during my selection process, I am confident that I spoke to some of these individuals. Almost the entirety of these conversations would have been social in nature. I have not spoken to or corresponded with Mr. Leo or Mr. Calabresi.

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 in 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: I do not recall ever receiving an honorarium from the Federalist Society.

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

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

Response: Not to my knowledge.

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

Response: No.

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

Response: No.

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

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

Response: Not to my knowledge.

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

Response: No.

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

Response: No.

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

Response: No.

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

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

Response: Not to my knowledge. I did correspond with the (now former) Chief Counsel for Senator Cruz, an alumnus of AFPI, who was the designated point of contact for judicial applications.

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

Response: No.

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

Response: No.

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

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

Response: Not to my knowledge.

- 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: Not to the best of my recollection.

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

Response: No.

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

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

Response: Although I do not know the full universe of persons associated with the Article III Project, to the best of my knowledge I did not speak with any officials from or anyone directly associated with the Article III Project as part of my selection process. In November 2025, I ran into Mike Davis and briefly spoke

with him. We did not discuss my interest in a district judgeship or my selection process.

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

Response: No.

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

Response: No.

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

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

Response: I have friends who work for ADF and I have kept them apprised of significant developments in my selection process.

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

Response: I have worked on litigation in partnership with ADF or supporting ADF. I have not spoken or appeared at any ADF events.

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

Response: No.

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

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

Response: To the best of my recollection, I spoke briefly with Ms. Severino at a conference we were both attending.

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

Response: Lehotsky Keller Cohn LLP represented Honest Elections Project in an amicus brief to the Fifth Circuit in *Petteway v Galveston County*, 111 F.4th 596 (5th Cir 2024). I participated minimally in this representation.

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

Response: Please see my response to Question 41(b).

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

Response: I am unaware of any such donations in support of my nomination. Any advocacy for or against my nomination would not bear on how I would decide cases if I am confirmed. Moreover, if confirmed, I would be guided by the Code of Conduct for United States judges, which states, “a judge should not personally participate in fundraising activities, solicit funds for any organization, or use or permit the use of the prestige of judicial office for that purpose. A judge should not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or is essentially a fund-raising mechanism.” See Code of Conduct of U.S. Judges, Canons 4.

- 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 unaware of any such donations. If confirmed, I will address all potential or actual conflicts in accordance with the federal recusal statute, the Code of Conduct for United States Judges, and any other laws and rules governing disqualification.

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

Response: Please see my responses to Questions 41(d) and 41(e).

Nomination of Andrew Davis
Nominee to be District Judge for the Western District of Texas
Questions for the Record
Submitted February 11, 2026

QUESTIONS FROM SENATOR WHITEHOUSE

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

1. According to the House Select Committee to Investigate the January 6th Attack on the U.S. Capitol, you were listed as an attendee on a calendar invitation for a briefing that Cleta Mitchell held on January 4, 2021. Mitchell told the Committee the briefing was to inform Members and staff on how the presidential election results in Georgia were fraudulent.

- a. Did you attend that briefing?

Response: Without additional information and context, I do not recall whether I attended the briefing.

- b. Did you discuss the content of that briefing with anyone afterward? If so, with whom, and did you tell them you believed the Georgia election results were fraudulent?

Response: Because I do not recall whether I attended this briefing, I also do not recall whether I discussed the content of the briefing with anyone.

2. During your confirmation hearing, you said that you have expressed views only on “one aspect, which was the constitutionality,” of *qui tam* provisions.

- a. Yes or no: As counsel on an amicus brief submitted on behalf of the Center for Constitutional Responsibility in *Zafirov v. Florida Medical Associates*, did you argue that provisions like the False Claims Act’s *qui tam* provision are “unconstitutional multiple times over”?

Response: I submitted the brief as an advocate on behalf of a client. The brief advanced my client’s position, including the above-quoted statement.

- b. Yes or no: In that same brief, did you say, “There is no reason to believe that Congress ever thought about the lawfulness” of the False Claims Act and similar statutes?

Response: I submitted the brief as an advocate on behalf of a client. The brief advanced my client’s position, including the above-quoted statement.

- c. Yes or no: In that same brief, did you argue that provisions like the False Claims Act's *qui tam* provision are "a threat to democratic accountability and the cohesiveness of our union"?

Response: I submitted the brief as an advocate on behalf of a client. The brief advanced my client's position, including the above-quoted statement.

- d. Yes or no: In that same brief, did you argue that the False Claims Act's *qui tam* provision "incentivizes private individuals to bring suit even when suit is against the public interest"?

Response: I submitted the brief as an advocate on behalf of a client. The brief advanced my client's position, including the above-quoted statement.

- e. Yes or no: In that same brief, did you argue that the False Claims Act's *qui tam* provision leads to "abusive litigation driven by the prospect of personal gain rather than the public interest"?

Response: I submitted the brief as an advocate on behalf of a client. The brief advanced my client's position, including the above-quoted statement.

3. As counsel on an amicus brief submitted on behalf of the Center for Constitutional Responsibility in *Zafirov v. Florida Medical Associates*, you wrote that "statutes like the [False Claims Act] that empower private individuals to litigate fundamentally public claims in exchange for a bounty raise serious concerns about 'vexatious and abusive litigation.'"

- a. Have you ever raised similar concerns about the Texas Heartbeat Act, or S.B. 8, which permits only private individuals to sue abortion providers and seek damages of at least \$10,000 to enforce the law?

Response: On behalf of the Center for Constitutional Responsibility, I submitted an *amicus curiae* brief in *Acheson Hotels v. Laufer*, No. 22-429 (U.S.) that contained the following sentence: "Outside of the federal system, there is also a growing and disturbing trend of state legislatures creating private rights of action that turn private citizens into bounty hunters seeking out legal violations for pecuniary or other gain. E.g., Cal. Bus. & Prof. Code § 22949.64; Tex. Health & Safety Code § 171.208(a)." Brief of Amicus Curiae Center for Constitutional Responsibility, *Acheson Hotels v. Laufer*, 2023 WL 4030229, at *19.

4. In how many criminal proceedings have you been listed as counsel?

Response: I have devoted my career to civil litigation at both the trial and appellate levels in state and federal court. As a civil litigator, I have not participated in criminal proceedings except for filing briefs on behalf of the Attorney General of Texas supporting the constitutionality of criminal laws, including Texas's anti-revenge pornography law.

a. In how many of those proceedings were you counsel of record?

Response: Please see my response to Question 4.

b. In how many of those proceedings did you appear in court?

Response: Please see my response to Question 4.

c. In how many of those proceedings did you present oral arguments?

Response: Please see my response to Question 4.

d. How many of those proceedings were tried to verdict?

Response: Please see my response to Question 4.

e. How many of those proceedings were jury trials?

Response: Please see my response to Question 4.

Senate Judiciary Committee
Hearing on
Nominations
February 4, 2026
Questions for the Record
Senator Amy Klobuchar

For Andrew Davis, to be U.S. District Court Judge for Western District of Texas

Justice Scalia said that our Constitution separates powers to “prevent the centralization of power in one person, or one party” because when power is centralized in one person, “the game is over” for rights.

- Do you agree with Justice Scalia regarding the importance of separation of powers?

Response: The Supreme Court has repeatedly explained, consistent with the above quotation from Justice Scalia, that “[t]he Framers’ inherent distrust of governmental power was the driving force behind the constitutional plan that allocated powers among three independent branches. This design serves not only to make Government accountable but also to secure individual liberty.” *Boumediene v Bush*, 553 U.S. 723, 742 (2008). Indeed, “[s]o convinced were the Framers that liberty of the person inheres in structure that at first they did not consider a Bill of Rights necessary.” *Clinton v City of New York*, 524 U.S. 417, 450 (1998). As James Madison wrote in Federalist 51, “[a]mbition must be made to counteract ambition.” The Federalist No. 51 (James Madison).

The separation of powers continues to serve as a safeguard protecting liberty by restraining each branch from usurping the powers of the others. The judiciary cannot arrogate to itself policymaking, for “[t]here can be no liberty ... if the power of judging be not separated from the legislative and executive powers.” The Federalist No. 47 (James Madison) (quoting Montesquieu). Likewise, liberty falters where “the legislative and executive powers are united in the same person, or body of magistrates.” *Id.* The Supreme Court has therefore issued numerous decisions checking each branch’s power—including its own. *See, e.g., Trump v. CASA, Inc.*, 606 U.S. 831 (2025) (checking judicial power); *INS v. Chadha*, 462 U.S. 919 (1983) (checking legislative power); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952) (checking executive power).

If I am confirmed, I will fairly and faithfully follow all binding precedent from the Supreme Court and the Fifth Circuit regarding the separation of powers.

President Trump has claimed “I have an Article II, where I have the right to do whatever I want as President.” He said “I have the right to do anything I want to do. I am the president of the United States.”

- [Yes or No]: Do you believe that the president is able to do “anything he want[s] to do”?

Response: Please see my response to the previous Question. Additionally, separation of powers disputes are the subject of political debate and litigation in every presidential

administration, and it would be inappropriate for me, as a nominee, to opine on separation of powers issues that could come before me if I am confirmed. *See* Code of Conduct of U.S. Judges, Canons 3(A)(6), 5.

**Nomination of Andrew Davis to the
United States District Court for the Western District of Texas
Questions for the Record
Submitted February 11, 2026**

QUESTIONS FROM SENATOR COONS

1. Do you believe that the Senate Judiciary Committee has a responsibility to evaluate judicial nominees to the best of its ability, including by asking questions on the record to make each nominee's unique background and viewpoint clear to the American people?

Response: Yes.

2. Do you believe that you, as a judicial nominee, have a responsibility to the American people to give full and complete answers to the Committee's questions to the best of your ability and in good faith?

Response: Yes.

3. Do you believe you fulfilled this responsibility with the answers you have provided to my questions for the record?

Response: Yes.

- a. Did you receive assistance from staff in the White House, the Department of Justice, or any other organization in writing your responses to these questions? If so, from whom did you receive assistance and what was the nature of the assistance you received?

Response: No.

- b. Do you believe it is appropriate for a nominee to answer my questions for the record with the verbatim answers of previous nominees who answered the same questions?

Response: Yes, if the response fully and accurately reflects my views on the topic.

- c. Did you review the answers to my questions for the record submitted by previous judicial nominees before answering these questions?

Response Yes.

- d. To your knowledge, are any of your answers to these questions for the record exact duplicates of answers provided by previous nominees?

Response: Yes.

4. 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 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.

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

Response: After graduating from law school, I had the honor to serve as a judicial law clerk to the Honorable Sidney A. Fitzwater of the U.S. District Court for the Northern District of Texas and the Honorable Reena Raggi of the U.S. Court of Appeals for the Second Circuit. Both of them helped form me as a young attorney, have provided advice throughout my career, and remain role models to me today.

6. How would you describe your judicial philosophy?

Response: My judicial philosophy is to apply the law as it is written and to faithfully follow all binding precedent. This philosophy is derived from the fact that power to be exercised by a judge in our constitutional system is limited. A judge has “neither FORCE nor WILL, but merely judgment.” The Federalist No. 78. A judge is thus limited to saying what the law is, and applying the law without regard to the judge’s personal or policy views. If a judge were to step outside that role, he would improperly usurp the power of the Legislature or the Executive.

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

Response: If I were confirmed, I would faithfully apply the standards set forth in all applicable Supreme Court and Fifth Circuit precedent.

- 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. The Supreme Court in *Dobbs v. Jackson Women’s Health Org.*, instructed that fundamental rights are those rights that are “objectively, deeply rooted in this Nation’s history and tradition.” 597 U.S. 215, 239 (2022) (quoting *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997)). I would faithfully apply this precedent and any other binding precedent.

- 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: If I were confirmed, I would be bound by any precedent of the Supreme Court or the Fifth Circuit that recognized a fundamental right. Precedent from another court of appeals could be considered for its persuasive authority, but could not override binding precedent from the Supreme Court or Fifth Circuit Court of Appeals.

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

Response: Yes.

- e. What other factors would you consider?

Response: I would consider any other factors identified in applicable precedent from the Supreme Court and the Fifth Circuit.

8. If you concluded that the President had violated his constitutional duty to faithfully execute the laws and then had to determine the remedy, what process would you use to perform that analysis? I assume you would faithfully follow binding precedent, but what specific precedents and/or other sources of law would you look to?

Response: The Constitution requires the President to “take Care that the Laws be faithfully executed.” Article II, § 3. And the Supreme Court has held that the President is authorized to “decide ‘how to prioritize and how aggressively to pursue legal actions against defendants who violate the law.’” *United States v. Texas*, 599 U.S. 670, 678 (2023) (quoting *TransUnion LLC v. Ramirez*, 594 U.S. 413, 429 (2021)). How these constitutional powers and authorities interact is a matter of ongoing dispute. If I were to be confirmed, this issue could come before me as a judge. Therefore, under the judicial canons, it would be inappropriate for me comment further. *See* Code of Conduct of U.S. Judges, Canon 3(A)(6).

9. Is President Trump eligible to be elected President for a third term in 2028? Assume that I know what the text of the 22nd Amendment says. I am interested in your application of that text to whether or not President Trump can be elected President in 2028.

Response: The 22nd Amendment to the U.S. Constitution states that “[n]o person shall be elected to the office of the President more than twice.” To the extent that this question calls for a response that could be understood as opining on a future case, it would be inappropriate for me to provide such an answer. *See* Code of Conduct for U.S. Judges, Canon 3(A)(6).

10. If Congress certifies a candidate as being the winner of a presidential election, does that mean that the candidate won the election? If not, what does it mean?

Response: It means that Congress has certified the candidate as the winner of the election.

11. At your Senate Judiciary Committee nomination hearing, Senator Blumenthal asked you who won the popular vote and the electoral college in the 2020 election. You replied that “President Biden was certified and served four years as president.”

- a. In advance of the hearing, did you prepare a potential answer or set of answers to question(s) you might receive related to who won the 2020 election? If so, what information or sources did you use to develop your answer(s)?

Response: Yes. I reviewed answers of previous nominees and the Code of Conduct of U.S. Judges, which states that judges and nominees should not weigh in on matters of public controversy and public debate. *See* Code of Conduct of U.S. Judges Canon 5.

- b. Prior to the hearing, did anyone instruct, suggest, imply, or otherwise represent that you should avoid directly answering questions about who won the 2020 election? If so, please explain. If not, please explain how you, without any outside input, made the decision to reply with who was *certified* the winner when asked about who *won* the 2020 election.

Response: Please see my response to Question 11(a).

- c. Do you believe that you would face any adverse professional consequences if you directly stated, during your hearing or otherwise on the record, that President Trump lost the 2020 election, or that President Biden won the 2020 election? Please explain.

Response: Such a response would involve me weighing in on a matter of public controversy and public debate. *See* Code of Conduct of U.S. Judges Canon 5. I do not know whether violating the canons in the Code of Conduct would lead to a formal complaint or other professional consequences, but I determined that the

appropriate course of action was to act consistent with those canons to avoid any appearance of impropriety.

12. 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.” As a general matter, what criteria would you use when deciding whether to recuse yourself from a case?

Response: If confirmed, I will follow 28 U.S.C. § 455 and all ethical requirements of the Code of Conduct for United States Judges. To the extent necessary, I will consult additional authorities, including ethics opinions from the Committee on Codes of Conduct for the Judicial Conference of the United States, as well as the opinions and experiences of other judges of the Western District of Texas.

13. I have been proud to co-lead the bipartisan *Safer Supervision Act*, a bill to reform our federal supervised release system that has received substantial conservative and law enforcement support. The premise of the bill is that our federal supervision system has strayed far from how Congress designed it, as courts impose it mechanically in essentially every case, which means that probation officers do not have time to properly supervise those who most need it. The bill reinforces courts’ existing obligations under 18 U.S.C. §§ 3553 and 3583 to impose supervision as warranted by the individual facts of the case and encourages more robust use of early termination when warranted to provide positive incentives encouraging rehabilitation. At the encouragement of a bipartisan group of members of Congress, the U.S. Sentencing Commission adopted an amendment to supervision guidelines implementing certain parts of the bill; this amendment went into effect on November 1.

- a. As a sentencing judge, would you endeavor to impose supervision thoughtfully and on the basis of the individual facts of the case consistent with 18 U.S.C. § 3553 and 18 U.S.C. § 3583?

Response: Yes.

- b. Would you agree that the availability of early termination under 18 U.S.C. § 3583(e)(1) can provide individuals positive incentives to rehabilitate?

Response: Yes.

- c. Will you commit if confirmed to reviewing the *Safer Supervision Act* and the recent Sentencing Commission amendment and considering them as you develop your approach to sentencing of supervised release?

Response: Yes.

14. If you had to determine whether it is appropriate for the President of the United States to punish a law firm for taking on a client that the President did not like, what process

would you use to perform that analysis? I assume you would faithfully follow binding precedent, but what specific precedents and/or other sources of law would you look to?

Response: This question calls for a response that could be seen as opining on current political disputes and ongoing litigation. Under the Code of Conduct for United States Judges, it would be inappropriate for me to comment. *See* Code of Conduct of U.S. Judges Canon 3(A)(6), 5.

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

Response: The Supreme Court has held that “freedom to travel throughout the United States ... [is] a basic right under the Constitution.” *United States v. Guest*, 383 U.S. 745, 758 (1966).

- a. If you had to determine whether it is constitutional for a state to restrict the interstate travel of its citizens, what process would you use to perform that analysis? I assume you would faithfully follow binding precedent, but what specific precedents and/or other sources of law would you look to?

Response: The Supreme Court has stated that “[t]he ‘right to travel’ discussed in our cases embraces at least three different components. It protects the right of a citizen of one State to enter and to leave another State, the right to be treated as a welcome visitor rather than an unfriendly alien when temporarily present in the second State, and, for those travelers who elect to become permanent residents, the right to be treated like other citizens of that State.” *Saenz v. Roe*, 526 U.S. 489, 500 (1999). If confirmed, I will follow this precedent, and all other Supreme Court and Fifth Circuit precedent, to the extent it applies to the facts and circumstances of a justiciable case or controversy before me.

To the extent this question asks me to opine on current political or legal disputes that are pending or could soon be pending before a court, it would be inappropriate for me to do so under the Code of Conduct for United States Judges. *See* Code of Conduct of U.S. Judges Canon 3(A)(6), 5.

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

Response: The Supreme Court has held that there is a constitutional right to privacy in certain contexts, including a right to use contraceptives, *see Griswold v. Connecticut*, 381 U.S. 479 (1965) (marital right); *Eisenstadt v. Baird*, 405 U.S. 438 (1972) (individual right), and the right to intimate activity between same-sex partners, *see Lawrence v. Texas*, 539 U.S. 558 (2003).

- a. Do you agree that that right 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: Please see my response to Question 16.

17. Does the public’s original understanding of the meaning of a constitutional provision constrain its application decades or centuries later?

Response: The U.S. Supreme Court has held that certain constitutional provisions must be interpreted according to their original meaning. *See, e.g., United States v. Rahimi*, 602 U.S. 680 (2024); *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022); *District of Columbia v. Heller*, 554 U.S. 570 (2008); *Crawford v. Washington*, 541 U.S. 36 (2004); *Wilson v. Arkansas*, 514 U.S. 927 (1995).

- a. What specific sources would you employ to discern the public’s original understanding of the meaning of a constitutional provision? Please provide three examples of sources you consider reliable in this regard.

Response: First and foremost, I would look to the text of the constitutional provision at issue and any analogous provisions, as well as to the broader context of the written document. I would look to contemporary writings, including the Federalist Papers and the Anti-Federalist Papers debating the Constitution to understand how the public understood the provision at issue. I would also look to English common law to the extent the provision at issue was drawn from the common law or intentionally departs from it.

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

Response: The Supreme Court has held that the Due Process Clause applies to non-citizens present in the United States. If confirmed, I will adhere to binding precedent governing the scope of the Fifth Amendment, including how much process is due.

19. Should you be confirmed, what would you do if a party refuses to comply with one of your orders?

Response: If I am confirmed and a party fails to comply with an order, I will consider issuing a show cause order, provide the parties notice and opportunity to be heard, and assess whether contempt is appropriate, following all applicable law and precedent.

20. In your Senate Judiciary Questionnaire, you described representing Fox News in *Dominion v. Fox News*, “a defamation suit brought by Dominion Voting Systems regarding statements by on-air Fox News personalities after the 2020 presidential election.” You explained that you “managed this case for [y]our firm on a day-to-day basis as it proceeded through discovery and dispositive motion practice, including by coordinating discovery, working with experts, drafting dispositive and non-dispositive motions, and developing litigation strategy.” Delaware Superior Court Judge Eric M.

Davis criticized Fox’s counsel for delaying document production and possible misrepresentations to the court during pre-trial proceedings.

- a. Do you stand by your representation of Fox News in this matter?

Response: I provided zealous legal representation in this matter consistent with the highest standards of professional conduct.

- b. If you are confirmed, what criteria would you use to determine whether a party was engaging in abusive litigation tactics, such as excessive discovery requests, repeatedly or frivolously filing motions, or other procedural delays?

Response: If confirmed, I would look to the Federal Rules of Civil Procedure—including Rules 11, 26, 27, and 37—as well as all applicable precedent. Whether a party has engaged in abusive litigation tactics is highly dependent on the facts and circumstances of each case. In evaluating any such concern, I would ensure that all parties receive proper notice and a full opportunity to be heard.

- c. If you determined that a party was engaging in such tactics, how would you address it?

Response: District courts have extensive tools to address abusive litigation conduct, including Rule 11 sanctions for frivolous pleadings, Rule 26(g) certification requirements for discovery requests, Rule 37 discovery sanctions ranging from fee-shifting to case dismissal, inherent power to sanction bad faith conduct, and proactive case management tools including scheduling orders and protective orders. I would reference statutes and rules, and all applicable legal precedent, to determine the proper remedy, if any, for such tactics.

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

Response: Whether and the extent to which a judge should consider the practical consequences of a ruling depends on the circumstances. For example, under 18 U.S.C. § 3553(a), a judge must consider practical consequences in the form of deterrence when imposing a sentence. As another example, a judge presented with a motion for a preliminary injunction must consider both the “public interest” and the extent to which the moving party “is likely to suffer irreparable harm in the absence of preliminary relief.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

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

Response: A judge’s personal life experience should prepare him to decide cases fairly and to treat all litigants and attorneys with respect.

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

Response: A judge's role is to apply the law, including precedents, to the facts of a case. He should not decide cases based on personal views or sympathy for a party. Judges should nonetheless strive to understand litigants and parties to treat them with integrity and respect.

24. What case or legal matter are you most proud of having worked on during your career?

Response: I am proud to have represented the Texas Attorney General in the successful constitutional defense of Texas's law criminalizing the distribution of revenge pornography.

25. Some district court judges have issued standing orders indicating that the court will favor holding an oral argument when there is a representation that the argument would be handled by a junior lawyer. Such efforts are intended to provide more speaking opportunities in court for junior lawyers. Would you consider issuing a standing order that would encourage more junior lawyers to handle oral arguments? Why or why not?

Response: If confirmed, I would consult with my colleagues regarding their views. I believe that stand-up experience for younger lawyers is important to the sustainability of the legal profession and that it should be encouraged where appropriate.

a. How else would you support the skills development of junior lawyers appearing before you?

Response: In my role in private practice, I seek opportunities for junior attorneys to gain experience and take on significant responsibilities. If confirmed, I would encourage parties before me to do the same where appropriate.

26. Discuss your proposed hiring process for law clerks.

Response: If confirmed, I would hire law clerks based on merit and integrity.

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

Response: No one should be subjected to workplace discrimination, harassment, or other misconduct, and everyone should be treated with respect. Beyond that, this question calls for a response that could be seen as opining on political matters or potential future cases, and I cannot provide such an answer consistent with my ethical obligations as a judicial nominee. *See* Code of Conduct of U.S. Judges, Canons 3(A)(6), 5.

27. Recently, multiple studies have revealed ongoing problems with workplace conduct policies and outcomes in the federal judiciary. In a national climate survey, hundreds of judiciary employees reported that they experienced sexual harassment, discrimination, or

other forms of misconduct on the job. A study by the Federal Judicial Center and the National Academy of Public Administration found the branch has failed to set up trusted reporting systems for employees who experience misconduct or ensure those handling complaints are adequately trained.

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

Response: No one should be subjected to workplace discrimination, harassment, or other misconduct, and everyone should be treated with respect. Before deciding on any particular trainings or policies, I would review the existing and available policies and programs in the Western District of Texas and consult with my colleagues to ensure that I am following best practices and not leaving any resources underutilized.

- 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: Please see my response to Question 27(a).

- 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: Generally, I would consider taking whatever steps would be warranted by the circumstances.

28. 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: The characterization of the events on January 6, 2021, is a subject of political debate and is involved in pending or impending litigation that could come before me if I am confirmed. It is therefore inappropriate for me to characterize those events. *See* Code of Conduct for U.S. Judges, Canon 3(A)(6), 5.

- a. If you think this question would require you to express an opinion on “political” matters, as some judicial nominees have responded when asked this question, please explain why labeling the events of January 6, 2021, as either “an insurrection” or “not an insurrection” requires you to opine on a “political” matter.

Response: Please see my response to Question 28.

29. As you know, the President has the power under the Constitution to grant executive clemency relief. Even so, in your opinion, do you think the individuals convicted of

assaulting law enforcement officers at the Capitol on January 6, 2021, deserved to be pardoned? I am asking for your opinion about whether the pardons were prudent, not whether the President has the authority to issue them.

Response: Whether a pardon is prudent is the subject of political debate and controversy. It would thus be inappropriate for me, as a nominee to the district court, to weigh in on the prudence of any pardon. *See* Code of Conduct for U.S. Judges, Canon 5.

30. If you were the President on January 20, 2025, would you have pardoned the individuals convicted of assaulting law enforcement officers at the Capitol on January 6, 2021? Again, I know that the President has the power under the Constitution to grant executive clemency relief. I want to know whether you—if serving as President on January 20, 2025—would have chosen to issue pardons to those convicted of assaulting law enforcement officers at the Capitol on January 6, 2021.

Response: Please see my response to Question 29.

31. In your Senate Judiciary Questionnaire, you note that 0% of your practice has involved criminal proceedings.

- a. Why do you think you are qualified to serve as a federal judge overseeing a substantial criminal docket if you have little to no experience with criminal cases?

Response: Throughout my career as a litigator, I have been a generalist, handling a wide range of complex legal matters across diverse areas of law. This has required me frequently to learn new areas of law quickly and thoroughly to provide the highest quality representation to my clients. I am confident that this adaptability and commitment to rigorous preparation would serve me well on the federal bench, including with respect to criminal matters.

Moreover, the core skills of a civil litigator—analyzing complex legal questions, evaluating evidence, managing a docket—translate directly to the criminal context. If confirmed, I will dedicate myself to mastering the Federal Sentencing Guidelines, criminal procedure, and all other aspects of the criminal docket with the same diligence and thoroughness I have brought to every new area of law I have encountered throughout my career.

Finally, although I have not practiced criminal law, my practice has exposed me to criminal law issues. For example, I have handled multiple habeas corpus petitions presenting issues of federal constitutional rights in criminal proceedings, I have filed appellate briefs defending Texas criminal laws, and, as a law clerk for both a federal district court judge and a federal court of appeals judge, I was exposed to federal criminal practice.

- b. If you are confirmed, what resources will you use to get up to speed on criminal proceedings?

Response: I have already begun this process. I have been studying the Benchbook for U.S. District Judges, the Federal Sentencing Guidelines and related commentary, and Fifth Circuit decisions on criminal law. I have also reviewed the Federal Rules of Criminal Procedure and Federal Rules of Evidence. I intend to continue studying these materials.

If confirmed, I intend to take full advantage of the resources available to new judges. I will also consult with my colleagues on the bench, drawing on their experience and recommendations for additional materials to review. I am committed to being fully prepared to handle criminal matters competently and fairly from the outset.

Questions for the Record for Andrew Bray Davis
Submitted by Senator Richard Blumenthal
February 11, 2026

1. The False Claims Act (FCA) is United States’s first whistleblower statute and remains one of the most powerful laws available for whistleblowers today. The FCA—particularly its *qui tam* provision—has also been one of the most successful anti-fraud statutes in our nation’s history.

a. Do you believe the FCA, and specifically its *qui tam* provision, is unconstitutional? If so, please explain why.

Response: As an advocate, I have filed briefs on behalf of clients taking the position that the False Claims Act’s *qui tam* provision is unconstitutional. The role of a judge, however, is different from that of an advocate. If confirmed as a district judge, I will faithfully apply the Constitution and all binding precedent of the Supreme Court and the United States Court of Appeals for the Fifth Circuit.

The Fifth Circuit has held that the False Claims Act’s *qui tam* provision is constitutional. *See Riley v. St. Luke’s Episcopal Hosp.*, 252 F.3d 749 (5th Cir. 2001). If confirmed, I would faithfully follow *Riley*.

2. If confirmed, will you recuse yourself from any case where a reasonable person, knowing all the relevant facts, might question your impartiality, even if you personally believe you can be fair?

Response: Yes. If confirmed, I will follow 28 U.S.C. § 455 and all applicable Supreme Court and circuit precedent governing recusal. A judge must disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

a. If confirmed, will you recuse yourself from cases involving individuals, organizations, or entities to which you or your family members have made political contributions or provided political support?

Response: If confirmed, I will evaluate recusal in accordance with 28 U.S.C. § 455 and all applicable precedent, including any circumstances in which my impartiality might reasonably be questioned.

b. If confirmed, will you recuse yourself from cases involving former clients, former law firms, or organizations with which you have had significant professional relationships?

Response: Yes. If confirmed, I will comply with 28 U.S.C. § 455(b) and all applicable ethics rules governing recusal in matters involving former clients, former law firms, and any professional relationships that could create an appearance of partiality.

- c. If confirmed, will you recuse yourself from cases involving personal friends, social acquaintances, or individuals with whom you have ongoing personal relationships?

Response: If confirmed, I will evaluate recusal in accordance with 28 U.S.C. § 455 and all applicable precedent, including any circumstances in which my impartiality might reasonably be questioned.

- 3. If confirmed, will you commit to avoiding all *ex parte* communications about pending cases, including informal discussions at social events or professional gatherings?

Response: Yes. If confirmed, I will adhere strictly to the Code of Conduct for United States Judges and all applicable rules prohibiting improper *ex parte* communications.

- a. If confirmed, will you avoid discussing pending cases or judicial business with elected officials, political appointees, or political operatives?

Response: Yes. If confirmed, I will comply with the Code of Conduct for United States Judges and will not engage in discussions regarding pending cases or judicial business with elected officials or political actors.

- b. If confirmed, will you commit to declining meetings or communications with lobbyists, advocacy groups, or special interests seeking to influence your judicial decisions?

Response: Yes. If confirmed, I will comply with the Code of Conduct for United States Judges, including Canon 2 instructing judges to avoid impropriety and the appearance of impropriety in all activities, and will not participate in meetings or communicate with lobbyists, advocacy groups, or special interests that seek to influence my judicial decisions.

- c. If confirmed, will you refrain from making public statements about legal or political issues that could reasonably be expected to come before your court?

Response: Yes. The Code of Conduct for United States Judges, including Canon 3(A)(6) and Canon 5, governs such matters. If confirmed, I will refrain from making public statements that could reasonably be expected to affect the outcome or impair the fairness of pending or impending matters.

- 4. If confirmed, will you commit to filing complete and accurate financial disclosure reports that include all required information about your financial interests and activities?

Response: Yes.

- a. If confirmed, will you decline all gifts from parties who might appear before your court or who have interests that could be affected by your judicial decisions?

Response: Yes. If confirmed, I will comply with the Code of Conduct for United States Judges and all applicable statutes and regulations governing gifts.

- b. If confirmed, will you decline privately funded travel, hospitality, or entertainment that could create an appearance of impropriety or special access?

Response: If confirmed, I will comply with the Code of Conduct for United States Judges and decline privately funded travel, hospitality, or entertainment that would create an appearance of impropriety or special access.

- c. If confirmed, will you ensure that any teaching, speaking, or writing activities comply with judicial ethics requirements and do not create conflicts with your judicial duties?

Response: Yes. If confirmed, I will comply with the Code of Conduct for United States Judges.

5. The House Republican-authored budget reconciliation bill for Fiscal Year 2026 had included a provision that would have limited federal judges' ability to hold government officials in contempt. While the Senate Parliamentarian ruled that the provision violated the Byrd Rule, and it was, therefore, removed, it would have prohibited federal courts from issuing contempt penalties against officials who disobey preliminary injunctions or Temporary Restraining Orders if the party seeking the order did not provide financial security to cover potential future damages for wrongful enjoining.

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

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

Response: The Supreme Court has recognized that the contempt power is inherent in the judiciary and essential to the enforcement of court orders. *See Ex parte Robinson*, 86 U.S. (19 Wall.) 505 (1873). If confirmed, I will faithfully apply all binding precedent concerning the scope and use of the contempt power.

- b. Do you believe that federal judges should be limited in their ability to hold government officials who defy court orders in contempt?

Response: This question calls for commentary on a matter of significant public and political debate. As a nominee for federal district judge, it would be inappropriate for me to express views on public controversies, political issues, or matters that could come before the courts. Consistent with the Code of Conduct for United States Judges, including Canons 3(A)(6) and 5, I must refrain from such commentary. If confirmed, I will faithfully apply the Constitution and all binding precedent to any case or controversy properly before me.

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

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

Response: Yes.

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

Response: Yes.

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

Response: Federal courts possess both civil and criminal contempt powers.

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

Response: As a general matter, federal court orders must be obeyed unless and until they are stayed, vacated, or reversed through established legal processes. Courts have recognized very narrow circumstances in which noncompliance may be raised as a defense in subsequent proceedings, such as where the issuing court lacked jurisdiction or where compliance was impossible. *See, e.g., Shillitani v. United States*, 384 U.S. 364 (1966). The Supreme Court has also recognized that, in limited circumstances, a party may choose to incur contempt sanctions in order to obtain appellate review. *See Mohawk Industries, Inc. v. Carpenter*, 558 U.S. 100 (2009).

Because questions regarding compliance with court orders could come before me if confirmed, it would be inappropriate for me to go further or to opine in the abstract. If confirmed, I would faithfully apply the Constitution and all binding Supreme Court and Fifth Circuit precedent.

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

Response: Please see my response to Question 6(b).

- d. What would make a court order unlawful?

Response: As explained in Question 6(b), court orders are binding and must be followed unless and until they are stayed, vacated, or reversed through established legal processes. An order that is alleged to be erroneous is still binding. Courts have recognized that an order entered without jurisdiction is void and is treated as a nullity. *See, e.g., In re Sawyer*, 124 U.S. 200 (1888). Beyond that narrow circumstance, questions regarding the validity or enforceability of court orders depend on the specific facts, procedural posture, and governing precedent. Because such issues could come before me if confirmed, it would be inappropriate for me to go further.

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

Response: As a general matter, a party bound by a court order must comply with the order and may seek reconsideration, request a stay, or pursue appellate review. *See Fed. R. Civ. P. 62; Fed. R. App. P. 8*. Courts have recognized narrow circumstances—such as lack of jurisdiction or impossibility of compliance—in which those issues may be raised through established legal channels. *See, e.g., Shillitani v. United States*, 384 U.S. 364 (1966); *Mohawk Industries, Inc. v. Carpenter*, 558 U.S. 100 (2009).

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

Response: Please see my response to Question 6(d)(i).

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

Response: Yes.

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

Response: Yes. I was in Senator Cruz's personal office in the Russell Senate Office Building pursuant to my duties as Senator Cruz's Chief Counsel.

Senator Mazie K. Hirono
Senate Judiciary Committee

Nomination Hearing
Questions for the Record for Andrew B. Davis

1. During your nominations hearing, you stated in response to my question whether Donald Trump lost 2020 election that “President Biden was the certified as the President and served 4 years.”

- a. **Does this mean that Donald Trump was not certified as the President in 2020?**

Response: Congress’s role in our constitutional system is to certify one President. Accordingly, by certifying Joe Biden as President in 2020, Congress did not certify Donald Trump.

2. From defending Texas’s racially gerrymandered maps to Fox News’ false claims about the 2020 election, you have defended causes that undermine the freedom, fairness, and public trust in our elections.

- a. **How can the public trust that you will protect voting rights and free elections?**

Response: I have advanced various positions in election-related cases as an advocate on behalf of my clients. The role of an advocate is very different from the role of a judge. If confirmed as a district judge, I will follow the law and all binding precedent from the Supreme Court and the Fifth Circuit fairly, faithfully, and impartially.

- b. **If confirmed, will you uphold the constitutional right to vote?**

Response: Please see my response to Question 2(a).

3. As an attorney, you have defended and supported numerous businesses, including Chevron, in evading responsibility for their environmental impacts.

- a. **Do you acknowledge the scientific consensus that greenhouse gas emissions significantly contribute to climate change, and would that guide your decisions as a judge?**

Response: This question calls for a response expressing an opinion on a political matter that is frequently litigated and is currently being litigated in various courts. Accordingly, it would be inappropriate for me to offer a view. *See* Code of Conduct of U.S. Court Judges, Canon 3(A)(6), 5. If confirmed, I will consider the facts properly presented in any case or controversy and apply the law fairly and impartially.

4. You served on President Trump’s transition team during his first administration. **Can you describe more about your role and contributions to this team?**

Response: As a junior member of the team, I assisted in the transition of policy and personnel for the U.S. Department of Justice.

Nomination of Andrew B. Davis
United States District Court for the Western District of Texas
Questions for the Record
Submitted February 11, 2026

QUESTIONS FROM SENATOR BOOKER

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

On May 29, 2025, Attorney General Pam Bondi ended this longstanding practice when she informed the ABA that, "[T]he Office of Legal Policy will no longer direct nominees to provide waivers allowing the ABA access to nonpublic information, including bar records. Nominees will also not respond to questionnaires prepared by the ABA and will not sit for interviews with the ABA."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: I am aware of criticisms that have been levied against the nominee ratings of the ABA's Standing Committee on the Federal Judiciary. As a judicial nominee, under the judicial canons it would be inappropriate for me to express an opinion on the statements of any political figure or to comment on any political and policy issue.

2. If this Committee were to establish that a sitting federal judge knowingly provided false testimony to this Committee, what do you believe the appropriate process and consequences should be?

Response: I would defer to this Committee as to the appropriate remedy in such a situation.

3. If this Committee were to establish that a political appointee knowingly provided false testimony to this Committee, what do you believe the appropriate process and consequences should be?

Response: I would defer to this Committee as to the appropriate remedy in such a situation.

4. How would you characterize your judicial philosophy?

Response: My judicial philosophy is to apply the law as it is written and to faithfully follow all binding precedent. This philosophy is derived from the fact that power to be exercised by a judge in our constitutional system is limited. A judge has "neither FORCE nor WILL, but

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>.

merely judgment.” The Federalist No. 78. A judge is thus limited to saying what the law is, and applying the law without regard to the judge’s personal or policy views. If a judge were to step outside that role, he would improperly usurp the power of the Legislature or the Executive.

5. What do you understand originalism to mean?

Response: Originalism refers to interpreting constitutional provisions according to their original public meaning at the time of ratification, as recognized in Supreme Court precedent.

6. Do you consider yourself an originalist?

Response: Although I generally consider myself an originalist, the label “originalist” can mean different things to different people. As Justice Kagan testified before this Committee, “[s]ometimes [the Framers] laid down very specific rules. Sometimes they laid down broad principles. Either way, we apply what they say, what they meant to do. So in that sense, we are all originalists.” The Nomination of Elena Kagan to be an Associate Justice of the Supreme Court of the United States: Hearing Before the Senate Committee on the Judiciary, S. Hrg. 111-1044, at 62 (2010).

If I am confirmed, the first and often final step for constitutional interpretation is U.S. Supreme Court precedent and Fifth Circuit precedent. If a question of constitutional interpretation is not resolved by precedent, I would strive to discern the original meaning of the provision at issue as a reasonable person would have understood it at the time of the Founding. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008).

7. What do you understand textualism to mean?

Response: Textualism refers to interpreting statutes based on their text, giving words their ordinary meaning in context rather than relying on policy preferences.

8. Do you consider yourself a textualist?

Response: I generally consider myself a textualist insofar as I believe the role of a judge is to interpret statutes in accordance with the methodology set forth in my answer to Question 7. But if confirmed, I would follow binding precedent regarding what a statute means or how it is to be interpreted, to the extent that precedent exists.

9. 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 set forth above is not duly enacted law satisfying the bicameralism and presentment requirements of Article I, Section 7 of the U.S. Constitution. Accordingly, Legislative history can never be used to alter the meaning of unambiguous text. If confirmed, when interpreting a law, I will follow all applicable judicial precedent from the Supreme Court and the Fifth Circuit.

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

Please see my response to Question 9(a).

10. 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: I am unfamiliar with this study, its methodologies, and its analysis. I am therefore not positioned to offer a view about the cause or causes that would explain this finding.

11. 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: I am unfamiliar with this study, its methodologies, and its analysis. I am therefore not positioned to offer a view about the cause or causes that would explain this finding.

12. 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: Section 18 U.S.C. § 3553(a) lays out factors that a judge shall consider when sentencing a defendant. A judge must follow these enumerated factors and is ultimately responsible for determining the appropriate sentence. A person's race should not factor into a judge's sentencing decision.

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.

To the extent that a party were to raise a claim asserting racial discrimination in the prosecutor's decision or another instance where an official exercises discretion in a racially discriminatory manner, I would follow the law and all precedent, recognizing that "the '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).

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

I believe that every person seeking to serve in the judicial branch should be considered without regard to their race, sex, ethnicity, religion, or other protected characteristic.

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

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

- a. Abortion
- b. Affirmative action
- c. Contraceptives or birth control
- d. Gender-affirming care
- e. Firearms
- f. Immigration
- g. Same-sex marriage
- h. Miscegenation
- i. Participation of transgender people in sports
- j. Service of transgender people in the U.S. military
- k. Racial discrimination
- l. Sex discrimination
- m. Religious discrimination
- n. Disability discrimination
- o. Climate change or environmental disasters
- p. "DEI" or Diversity Equity and Inclusion

Response: To the best of my knowledge, my Senate Judiciary Questionnaire discloses all my published writings and public statements. To discern which topics my published writings and public statements have addressed, I would consult my Questionnaire and associated materials. I believe that the following two publications address one or more topics listed above: *Comment under attack for revealing American weakness*, The Daily Toreador (October 24, 2005); *Equality shouldn't be based on IQ scores*, The Daily Toreador (September 7, 2005).

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

Response: As a general matter, federal court orders must be obeyed unless and until they are stayed, vacated, or reversed through established legal processes. Courts have recognized very narrow circumstances in which noncompliance may be raised as a defense in subsequent proceedings, such as where the issuing court lacked jurisdiction or where compliance was impossible. *See, e.g., Shillitani v. United States*, 384 U.S. 364 (1966). The Supreme Court has also recognized that, in limited circumstances, a party may choose to incur contempt sanctions in order to obtain appellate review. *See Mohawk Industries, Inc. v. Carpenter*, 558 U.S. 100 (2009).

- 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: If I am confirmed and a party fails to comply with an order, I will consider issuing a show cause order, provide the parties notice and opportunity to be heard, and assess whether contempt is appropriate, following all applicable law and precedent.

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

Response: Please see my response to Question 15.

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

Response: The Constitution vests legislative power in Congress and requires the President to “take Care that the Laws be faithfully executed.” Article II, § 3. The Constitution, however, also vests the President with the authority to veto legislation passed by Congress. Article I, § 7, Cl. 2, and authorizes the President to “decide ‘how to prioritize and how aggressively to pursue legal actions against defendants who violate the law.’” *United States v. Texas*, 599 U.S. 670, 678 (2023) (quoting *TransUnion LLC v. Ramirez*, 594 U.S. 413, 429 (2021)). How these constitutional powers and authorities interact is a matter of ongoing dispute. If I were to be confirmed, this issue could come before me as a judge. Therefore, under the judicial canons, it would be inappropriate for me to comment further. *See, e.g., Code of Conduct for U.S. Judges*, Canons 3(A)(6), 5.

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

Response: If confirmed as a district judge, I would follow 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.* To the extent that this question asks for me to opine on a subject of pending litigation or a matter that could come before me as a federal judge, it would not be appropriate for me to do so under the judicial canons. *See, e.g.*, Code of Conduct for U.S. Judges, Canons 3(A)(6), 5.

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

Response: Please see my response to Question 17.

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

Response: Yes.

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

Response: The Supreme Court has held that the Due Process Clause applies to non-citizens present in the United States. If confirmed, I would adhere to binding precedent governing the scope of the Fifth Amendment, including how much process is due.

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

Response: The Supreme Court has recognized Congress's authority to delegate regulatory authority to federal agencies within constitutional limits. If confirmed, I will faithfully apply governing nondelegation precedent.

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

Response: Yes. Although it is typically inappropriate for a nominee to offer views on whether a particular Supreme Court precedent was correctly decided, numerous nominees have made an exception for *Brown v. Board of Education*.

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

Response. Yes. *Griswold* involved a state law banning the use of contraceptives or assisting others in obtaining contraceptives. The Supreme Court held that the law was unconstitutional because it infringed on a constitutional right of marital privacy.

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

Response: Yes. *Lawrence* involved a state law making it a crime for two persons of the same sex to engage in certain intimate sexual conduct. The Supreme Court held this law was unconstitutional because the Due Process Clause protects consensual private sexual conduct.

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

Response: Yes. *Obergefell* involved state laws that defined marriage as a union between one man and one woman. The Supreme Court held that those laws were unconstitutional because the Due Process Clause and Equal Protection Clauses of the Fourteenth Amendment protect a same-sex couple's right to marry in all states.

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

Response: President Biden was certified as the winner of the 2020 presidential election and served as the 46th President of the United States. To the extent you are asking about disputes or political statements regarding the 2020 presidential election, I cannot provide such an answer consistent with my ethical obligations as a judicial nominee. *See* Code of Conduct of U.S. Judges, Canons 3(A)(6), 5.

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

Response: Please see my response to Question 26.

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

Response: Please see my response to Question 26.

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

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

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

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

Response: Please see my response to Question 27(a).

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

⁴ U.S. CONST. amend. XXII.

Response: Donald Trump was certified as the winner of the 2024 presidential election and is currently serving as the 47th President of the United States.

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

Response: Please see my response to Question 27(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 Twenty-Second Amendment to the Constitution states that “[n]o person shall be elected to the office of the President more than twice.”

28. 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: My answer to any question posed to me by a member of this Committee, either verbally or in writing, is my own.

29. 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.

30. 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: Not to my knowledge.

31. 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.

32. 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: Yes. Via text message in early 2025 I congratulated Mr. Mizelle on his appointment in the Department of Justice, and in early 2026 he congratulated me on my nomination to be a district judge. I briefly spoke with him in November 2025 when we saw each other at a conference. We did not discuss my interest in becoming a district judge.

33. 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.

34. 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: When I met with the Office of Legal Policy in preparation for my hearing before this Committee, Mr. Blanche briefly attended.

35. 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.

36. 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.

37. 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: Not to my knowledge.

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

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

Response: Not to my knowledge.

39. 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: Not to my knowledge.

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. Do you agree with the above statement?

I am not familiar with the above statement or the context in which it was made. I do not believe all Democrats are evil.

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

Response: Not to my knowledge.

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

Response: I have known Mike Davis in a professional capacity for several years and we have had infrequent contact.

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

Response: Please see my response to question 42(c).

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

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. If so, who? What advice did they give?

Response: Please see my response to Question 43.

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

Response: No.

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

Response: Although I do not know the full universe of persons associated with the Article III Project, to the best of my knowledge I did not speak with any officials from or anyone directly associated with the Article III Project as part of my selection process. In November 2025, I ran into Mike Davis and briefly spoke with him. We did not discuss my interest in a district judgeship or my selection process.

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

Response: I do not know the full universe of persons associated with the Federalist Society, but I understand that there are thousands of members and I have multiple friends and acquaintances who are either members or officers of the Federalist Society. Accordingly, during my selection process, I am confident that I spoke to some of these individuals. Almost the entirety of these conversations would have been social in nature.

45. Please explain, with particularity, the process whereby you answered these written questions, including whether you personally drafted initial responses and whether anyone helped draft, review, or edit the answers.

Response: I prepared these responses on my own, and consulted my records, case law, statutory provisions, the Constitution, and previous Questions for the Record submissions in doing so. After receiving feedback from persons at the Office of Legal Policy at the U.S. Department of Justice, I finalized my answers and authorized them to be submitted to the Senate Judiciary Committee.

Senator Peter Welch
Senate Judiciary Committee
Written Questions for Andrew Bray Davis
Hearing on “Nominations”
Wednesday, February 4, 2026

1. In 2025, you filed an amicus brief on behalf of the Center for Constitutional Responsibility in *United States ex rel. Zafirov v. Florida Medical Associates, LLC* before the Eleventh Circuit. Your brief argued that *qui tam* provisions of the False Claims Act, which allow private individuals to file lawsuits on behalf of the government, are unconstitutional “multiple times over.”

- a. Please explain this statement and the other arguments in your brief.

Response: That amicus brief, which was filed on behalf of a client, argues that the *qui tam* provisions of the False Claims Act violate multiple provisions of Article II of the Constitution, including Article II’s Vesting Clause and Appointments Clause. These arguments are further developed in the brief, which speaks for itself.

In contrast to the Eleventh Circuit, the Fifth Circuit has already upheld the False Claims Act’s *qui tam* provision against constitutional challenge. *See Riley v. St. Luke’s Episcopal Hosp.*, 252 F.3d 749 (5th Cir. 2001) (en banc). *Riley* is binding precedent for all courts in the Fifth Circuit, including the Western District of Texas, and if confirmed, I will follow *Riley* fairly and faithfully.

- b. Chairman Grassley filed an amicus brief in *Zafirov* in direct opposition to your brief. What is your response to the arguments his brief raised?

Response: I do not have a response to the arguments made in Chairman Grassley’s brief, as the views expressed in the amicus brief I authored represent the views of my client, the Center for Constitutional Responsibility, not my personal views. To the extent the question calls for my personal views in response to Chairman Grassley’s arguments, it would be inappropriate for me to comment on pending litigation. *See Code of Conduct of U.S. Judges*, Canon 3(A)(6).

- c. The plaintiff in the case was a doctor who alleged that her employer and other defendant hospitals misrepresented the conditions of their patients to the federal government and engaged in Medicare fraud. What do you believe are the measures Congress can take to address the fraudulent misuse of U.S. taxpayer dollars that, in your view, would comply with the Constitution?

Response: Protecting U.S. taxpayer dollars against fraudulent misuse is an important policy. As a judicial nominee, however, it would be inappropriate for me to weigh in on what measures Congress can or should take to accomplish this policy. *See* Code of Conduct of U.S. Judges, Canons 3(A)(6), 5.