

Senator Dick Durbin
Ranking Member, Senate Judiciary Committee
Written Questions for Benjamin M. Flowers
Nominee to be U.S. Circuit Judge for the Sixth Circuit
May 27, 2026

1. In 2023, you coauthored an article criticizing the bipartisan *First Step Act*. You argued that this landmark legislation, which President Trump signed into law, is unconstitutional. You further stated that Congress should repeal it. The *First Step Act* is the most significant reform to our criminal justice system in a generation, and I was honored to work on it with my colleagues on the Judiciary Committee—including the legislation’s lead sponsor, Chairman Grassley.

a. Do you still maintain that the *First Step Act* is unconstitutional?

Response: As a judicial nominee, it would be inappropriate for me to prejudge or forecast my views on legal issues that may come before me. When I coauthored that academic article, I advanced an argument as a practicing lawyer. There is a substantial difference between the role of an author or advocate and the role of a judge. All judges who previously litigated cases or composed scholarship have advocated for legal propositions. Upon taking the bench, they take on a new role: fairly adjudicating cases according to the law, including binding precedent, without regard to any positions they might have advanced as advocates or in scholarship. If I am confirmed, I will discharge my duties in the manner just described.

In your article, you also argued that the *First Step Act* is “terrible policy.” Through January 2024, more than 40,000 individuals were released under the *First Step Act*. Notably, just under 10 percent have been rearrested, as opposed to the Bureau of Prisons’ overall recidivism rate of 45 percent.

b. Please explain your conclusion that the *First Step Act* is “terrible policy.”

Response: When I coauthored that academic article, I advanced an argument as a practicing lawyer. As a judicial nominee, it would be inappropriate for me to comment about policy matters. See Code of Conduct for United States Judges, Canon 5.

2. At its core, the *First Step 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 to consider individualized case-specific circumstances—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: The role of a federal judge is to correctly decide cases according to law, without fear or favor to anyone. If confirmed, I will adhere to this role in all cases, including those arising under the First Step Act.

b. To avoid the appearance of bias, will you commit to recusing yourself from cases involving the *First Step Act*, given your public conclusion that the Act is unconstitutional?

Response: If confirmed, I would evaluate conflicts and recusal issues with reference to 28 U.S.C. § 455, the Code of Conduct for United States Judges, and all other applicable laws, regulations, and rules.

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

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

- 3.** In January 2026, you submitted an amicus brief to the Supreme Court on behalf of the Pacific Research Institute. In it, you supported a drug company’s cert petition and argued that the drug-pricing program enacted through the *Inflation Reduction Act* is unconstitutional because it “empowers the government to coerce drug companies into selling their drugs for less than fair market value.” In March 2026, the Trump Administration filed a brief in opposition to the cert petition. The Supreme Court sided with the Administration on May 18, 2026.

a. Do you still believe the federal drug-pricing program is unconstitutional?

Response: I authored the amicus brief on behalf of a client before I became a judicial nominee. As a judicial nominee, it would be inappropriate for me to comment about policy or to forecast my view on issues that may come before me if confirmed. *See* Code of Conduct for United States Judges, Canons 3, 5.

b. Do you continue to oppose the Trump Administration’s position on this issue?

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

4. In December 2024, you retweeted a post that read: “If there’s no serious movement to amend the president’s pardoning power after Biden, there never will be.”¹

a. Do you still believe there should be a movement to amend the President’s pardon power?

Response: As a judicial nominee, it would be inappropriate for me to comment on potential constitutional amendments, potential legislation, and matters of political controversy. *See* Code of Conduct for United States Judges, Canon 5.

b. Do you have any concerns with President Trump using the pardon power to pardon individuals who violently assaulted law enforcement officers on January 6?

Response: As a judicial nominee, it would be inappropriate for me to comment on matters of political controversy that may also be subject to ongoing litigation. *See* Code of Conduct for United States Judges, Canons 3(A)(6), 5.

c. Do you have any concerns with President Trump pardoning fraudsters who have made huge contributions to the President his family?

Response: Please see my answer to Question 4.b.

5. In 2016, you authored an op-ed in which you accused Ohio’s Democratic candidate for Senate of “publicly celebrat[ing]” the death of Justice Antonin Scalia. You stated that his comments called into question the candidate’s “fitness to represent” your state and further argued that “no one who would cheer the death of so principled and passionate a public servant deserves to” hold public office.

a. Do you still believe that an individual’s character is an important part of their fitness to represent a constituency?

Response: Yes.

b. Do you maintain that anyone who cheers the death of a public servant has no business holding public office?

Response: As a judicial nominee, it would be inappropriate for me to opine on a political issue or a statement by any political figure. *See* Code of Conduct for United States Judges, Canon 5.

¹ Keith E. Whittington, @kewhittington, X (Dec. 23, 2024, 9:28 AM), <https://x.com/kewhittington/status/1871201194946740679>.

- c. **Given your prior commentary, what was your reaction to President Trump writing of former Federal Bureau of Investigation Director Robert Mueller, “Good, I’m glad he’s dead?”²**

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

6. You once retweeted a post that stated: “I, for one, am in favor of illegal immigrants who wish to set people on fire for their ethnicity or beliefs knowing that if they set people on fire for their ethnicity or beliefs, there will be significant downsides for their illegal immigrant family members, too.”³

- a. **Why did you retweet this post?**

Response: I do not recall why I retweeted this post, which appears to refer to an incident from Colorado in which “a group demonstrating for the release of Israeli hostages in Gaza” was attacked with Molotov cocktails. *See Victims of Boulder firebombing attack honored with vigil as suspect’s family fights deportation*, PBS News (June 5, 2025), <https://perma.cc/6ZXE-WQA2>. I categorically condemn violence perpetrated against people based on their ethnicity or their beliefs.

- b. **Do you believe this statement demonstrates support for collective punishment that includes individuals who did not commit a crime? Please explain why or why not.**

Response: As a judicial nominee, it would not be appropriate for me to comment, as the post appears to refer to issues presented in pending litigation. *See Code of Conduct for United States Judges, Canon 3(A)(6); Mead Gruver, Man who firebombed a demonstration in Colorado, killing 1, is sentenced to life in prison*, Associated Press (May 7, 2026) (discussing state of litigation), <https://perma.cc/SK57-J4MD>.

- c. **What “significant downsides” do you support for undocumented family members of individuals who are accused of committing crimes?**

Response: Please see my answers to Questions 6.a and 6.b.

7. During your hearing, Senator Kennedy and Senator Welch asked you about the need to follow court orders and a speech you gave entitled, “Departmentalism in the Age of Trump.” In that speech, you said that “while the President must abide by the court-issued judgments, he may refuse to abide by the reasoning in opinions accompanying those judgments when the reasoning is contrary to the law.” Senator Kennedy also asked you if

² Donald J. Trump, @realDonaldTrump, Truth Social (Mar. 21, 2026, 1:26 PM), <https://truthsocial.com/@realDonaldTrump/posts/116268334535345382>.

³ Mary Katherine Ham, @mkhammer, X (June 4, 2025, 2:02 PM), <https://x.com/mkhammer/status/1930324247244673253>.

you thought anyone had the right to defy a federal court order. You responded that there were jurisdiction-based instances in which court orders could be ignored.

a. Is President Trump required to abide by court orders?

Response: Litigants must generally follow court orders issued in a proceeding to which they are a party. The normal recourse for any litigant who disagrees with a judicial order is to seek reconsideration, to appeal, to seek a stay, or to pursue some combination of these options. The same is true for litigants who are Executive Branch officials. Courts have held that parties may refuse to follow court orders only in exceptionally narrow circumstances. For example, parties may defy an order as a means of securing the appeal of an otherwise-unappealable interlocutory order. The Supreme Court recognized this exception in *Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100 (2009), which acknowledged that one “long-recognized option” for appealing interlocutory disclosure orders is to intentionally defy the order, “incur court-imposed sanctions,” and then appeal from the sanctions award. *Id.* at 111. Further, “[i]f a court order issues without personal or subject matter jurisdiction, the decree may be violated without incurring the penalty of criminal contempt.” *In re Establishment Inspection of Hern Iron Works, Inc.*, 881 F.2d 722, 726 (9th Cir. 1989); *accord Ex parte Fisk*, 113 U.S. 713, 714 (1885) (“When, however, a court of the United States undertakes, by its process of contempt, to punish a man for refusing to comply with an order which that court had no authority to make, the order itself, being without jurisdiction, is void, and the order punishing for the contempt is equally void.”). The Supreme Court has also suggested that parties may not be bound to comply with an order where it is “factually impossible” to do so. *United States v. Rylander*, 460 U.S. 752, 757 (1983).

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.

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

Response: Please see my answer to Question 7.a.

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

Response: Please see my answer to Question 7.a.

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

Response: Please see my answer to Question 7.a. In a concrete case or controversy, federal courts may determine the lawfulness of a court order.

8. Did President Trump lose the 2020 election?

Response: Joe Biden was certified the winner of the 2020 election. To the extent this question asks for my opinion about the existence or non-existence of fraud, election irregularities, or other matters pertaining to the fairness or integrity of the election, I agree with Justice Ketanji Brown Jackson who, in her responses to this Committee's questions for the record pertaining to the 2016 and 2020 elections, explained that under the Code of Conduct for United States Judges, it is inappropriate for judicial nominees to comment on election results.

9. Where were you on January 6, 2021?

Response: I was at my home in Ohio.

10. Do you denounce the January 6 insurrection?

Response: I categorically condemn the violent actions that occurred at the Capitol on January 6, 2021. More broadly, I categorically condemn political violence and violence against law-enforcement officers. Because the characterization of the events of that day is a matter of political controversy and is also subject to pending litigation, it would be inappropriate for me to comment further. *See* Code of Conduct for United States Judges, Canons 3(A)(6), 5.

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

a. Are non-party injunctions constitutional?

Response: In *Trump v. CASA, Inc.*, 606 U.S. 831 (2025), the Supreme Court held that injunctions awarding relief to non-parties are impermissible. The Court did not reach the question whether such injunctions are constitutional. As that matter could come before me if confirmed, it would not be appropriate for me to comment further.

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

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

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

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

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

Response: I have sought nationwide relief as a practicing attorney. I do not have an exhaustive list of all such cases, as they had become commonplace during my time as Solicitor General, when I oversaw an immense number of cases. I can, however, provide at least two examples of cases in which I sought nationwide relief on behalf of a coalition of States (including Ohio): *Arizona v. Biden*, No. 21-cv-314 (S.D. Ohio), and *Ohio v. Becerra*, No. 21-cv-675 (S.D. Ohio).

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

Response: No.

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

Response: The Twenty-Second Amendment provides, in relevant part: “No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once.” U.S. Const., amend. XXII, § 1. To the extent this question asks for an opinion on a hypothetical legal dispute that could come before me if confirmed, it would be inappropriate for me to comment further.

- 14. 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...”⁴**

- 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: As a judicial nominee, it would be inappropriate for me to opine on a political issue or a statement by any political figure. *See* Code of Conduct for United States Judges, Canon 5.

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

⁴ Donald J. Trump (@realDonaldTrump), TRUTH SOCIAL (May 26, 2025, 7:22 AM), <https://truthsocial.com/@realDonaldTrump/posts/114573871728757682>.

Response: Please see my answer to Question 14.a.

15. 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”⁵ and later reposted the images of the three judges who decided the case and wrote, “we are living under a judicial tyranny.”⁶

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

Response: Please see my answer to Question 14.a.

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

Response: Please see my answer to Question 14.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 answer to Question 14.a. Groups opposed to my nomination have shared my picture on the internet in publications opposing my nomination. *See Benjamin Flowers*, Alliance for Justice, <https://afj.org/nominee/benjamin-flowers/>.

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

Response: Lower courts may never depart from a directly controlling Supreme Court precedent. *See Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122, 136 (2023) (“If a precedent of this Court has direct application in a case, . . . a lower court should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions.”) (quotation marks omitted).

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

Response: Within the Sixth Circuit, a three-judge panel “cannot overrule the decision of another panel. The prior decision remains controlling authority unless an inconsistent decision of the United States Supreme Court requires modification of the decision or [the Sixth Circuit] sitting en banc overrules the prior decision.” *Kerman v. C.I.R.*, 713 F.3d 849, 866 (6th Cir. 2013) (quotation marks omitted). To my knowledge, the Sixth Circuit has not announced a particular standard to govern whether the en banc court should overrule circuit precedent. But Federal Rule of Appellate Procedure 40(b)(2), along with

⁵ Stephen Miller (@StephenM), X, (May 28, 2025, 7:48 PM), <https://x.com/StephenM/status/1927874604531409314>.

⁶ Stephen Miller (@StephenM), X, (May 29, 2025, 8:25 AM), <https://x.com/StephenM/status/1928065122657845516>.

the Sixth Circuit’s Internal Operating Procedures, *see* 6 Cir. I.O.P. 40(b)(1), suggest that en banc review may be appropriate when a panel decision conflicts with Sixth Circuit precedent, conflicts with Supreme Court precedent, conflicts with precedent from another circuit court, or presents questions of exceptional importance.

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

Response: When the Supreme Court is asked to overrule its own constitutional precedents, it applies the standard articulated in *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 268 (2022). The Court has at times expressed greater reluctance to overrule precedents interpreting statutes. *See, e.g., Kimble v. Marvel Ent., LLC*, 576 U.S. 446, 456 (2015) (“What is more, *stare decisis* carries enhanced force when a decision . . . interprets a statute. Then, unlike in a constitutional case, critics of our ruling can take their objections across the street, and Congress can correct any mistake it sees.”).

19. 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: I agree with now-Judge Rachel Bloomekatz, who in her responses to a nearly identical question, stated: “As a judicial nominee, it is generally inappropriate for me to comment on the merits of the Supreme Court’s binding precedents.” *See* Written Questions for Rachel Bloomekatz, Nominee to be United States Circuit Judge for the Sixth Circuit at 7 (June 29, 2022), <https://perma.cc/7THV-6H7X>. “The only listed cases that are an exception that general practice, as other nominees have recognized, are for *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954), and *Loving v. Virginia*, 388 U.S. 1 (1967), . . .” *Id.* I will join past nominees in agreeing that *Brown* and *Loving* were correctly decided.

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

Response: The Supreme Court and the Sixth Circuit have interpreted constitutional provisions with reference to their original meanings. *See, e.g., Gamble v. United States*, 587 U.S. 678, 683 (2019) (Double Jeopardy Clause); *United States v. Jones*, 565 U.S. 400, 405–06 (2012) (Fourth Amendment); *District of Columbia v. Heller*, 554 U.S. 570, 576–628 (2008) (Second Amendment); *Crawford v. Washington*, 541 U.S. 36, 50 (2004) (Confrontation Clause). If confirmed, I would follow these and all other binding Supreme Court precedents. Circuit judges may consult the original public meaning of constitutional provisions, but they may never rely on that meaning if doing so would contravene binding Supreme Court or circuit precedent.

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

Response: Please see my answer to Question 20.

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

Response: In *Obergefell v. Hodges*, 576 U.S. 644 (2015), the Supreme Court held that the Fourteenth Amendment entitles same-sex couples to marry on the same terms as opposite-sex couples. *Obergefell* also held that States must recognize same-sex marriages performed outside the State. If confirmed, I would be bound to, and would, faithfully apply *Obergefell* without regard to whether it accords with the original meaning of the Constitution. As explained in response to Question 19, I cannot opine on whether the decision in fact accords with the Constitution’s original meaning, as this would bear on the decision’s correctness.

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

Response: Yes. *Loving v. Virginia*, 388 U.S. 1 (1967), held that laws banning interracial marriages are unconstitutional. As explained in my answer to Question 19, *Loving* was correctly decided.

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

Response: The Fourteenth Amendment’s Equal Protection Clause forbids any State to “deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1. The Supreme Court has long held that the same equal-protection guarantee applies to the federal government through the Fifth Amendment. *Bolling v. Sharpe*, 347 U.S. 497, 500 (1954). In both contexts, the Equal Protection Clause has been understood to impose varying degree of scrutiny on legislative or executive classifications. If a law or other government act “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. Skrmetti*, 605 U.S. 495, 510 (2025). In contrast, classifications that burden a fundamental right or that target a suspect class are subject to heightened scrutiny. “For example, laws that classify on the basis of race, alienage, or national origin trigger strict scrutiny and will pass constitutional muster only if they are suitably tailored to serve a compelling state interest.” *Id.* (quotation marks omitted). And “laws containing sex-based classifications” are subject “to intermediate scrutiny, under which the [government] must show that the ‘classification serves important governmental objectives and that the discriminatory means employed are substantially related to the achievement of those objectives.’” *Id.* (quoting *United States v. Virginia*, 518 U.S. 515, 533 (1996)). If confirmed, I would faithfully apply these precedents.

The Due Process Clause appears in the Constitution twice. The Fifth Amendment, which applies against the federal government, guarantees that no “person” may “be deprived of life, liberty, or property, without due process of law.” U.S. Const. amend. V. The Fourteenth Amendment says: “nor shall any State deprive any person of life, liberty, or property, without due process of law.” U.S. Const. amend. XIV, § 1. Both clauses have been understood to include both procedural and substantive guarantees. Generally, the clauses’ procedural protections guarantee the fairness of proceedings in which individuals may be deprived of life, liberty, or property. The clauses’ substantive components, broadly speaking, “provide[] heightened protection against government interference with certain fundamental rights and liberty interests.” *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997). As explained above, a right is “fundamental” for purposes of the Due Process Clause if “the right is deeply rooted in our history and tradition and . . . it is essential to our Nation’s scheme of ordered liberty.” *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 237 (2022) (brackets and quotation marks omitted). The Supreme Court has relied on this doctrine to hold that most guarantees of the Bill of Rights apply against the States. *See, e.g., Timbs v. Indiana*, 586 U.S. 146, 150 (2019). It has also relied on this doctrine to recognize certain unenumerated rights, such as the right to use contraceptives. *See Griswold v. Connecticut*, 381 U.S. 479, 485–86 (1965).

If confirmed, I would faithfully apply these and all other binding precedents.

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

Response: The Supreme Court has held that a government-imposed sex-based classification comports with the Equal Protection Clause only if the government can show that the classification “serves important governmental objectives and that the discriminatory means employed are substantially related to the achievement of those objectives.” *United States v. Virginia*, 518 U.S. 515, 524 (1996) (quotation marks omitted). The Supreme Court has further held that the Fourteenth Amendment confers a right to same-sex intimacy, *Lawrence v. Texas*, 539 U.S. 558 (2003), and a right of same-sex individuals to marry on the same terms as individuals of the opposite sex, *Obergefell v. Hodges*, 576 U.S. 644 (2015). I would faithfully apply these and all other binding precedents if confirmed.

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

Response: Please see my answer to Question 20.

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

Response: Please see my answer to Question 20.

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

Response: The First Amendment contains five categories of guarantees: it guarantees religious freedom, freedom of speech, freedom of the press, the right to assemble, and the right to petition the government for redress of grievances. The application of the First Amendment depends on the facts at issue in any particular case. If confirmed, I will faithfully apply all binding precedents regarding the First Amendment.

29. 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 held that a “regulation of speech is facially content based under the First Amendment if it targets speech based on its communicative content—that is, if it applies to particular speech because of the topic discussed or the idea or message expressed.” *City of Austin v. Reagan Nat’l Advert. of Aus., LLC*, 596 U.S. 61, 69 (2022) (quotation marks and brackets omitted). If confirmed, I would faithfully apply this and all other binding precedents.

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

Response: The Supreme Court has held that “[t]rue threats’ of violence” are not protected by the Free Speech Clause. *Counterman v. Colorado*, 600 U.S. 66, 74 (2023). “True threats are serious expressions conveying that a speaker means to commit an act of unlawful violence.” *Id.* (quotation marks and brackets omitted). If confirmed, I would faithfully apply binding Supreme Court precedents applying the true-threats doctrine.

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

Response: The Due Process Clauses in the Fifth and Fourteenth Amendments apply to “person[s].” The Supreme Court has held 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). I would faithfully apply this and other Supreme Court precedents if confirmed.

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

Response: As a judicial nominee, it would be inappropriate for me to comment on matters that are subject to ongoing litigation. *See* Code of Conduct for United States Judges, Canon 3(A)(6).

33. 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: As a judicial nominee, it would be inappropriate for me to comment on matters that are subject to ongoing litigation. *See* Code of Conduct for United States Judges, Canon 3(A)(6).

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

Response: Please see my answer to Question 33.a.

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

Response: No one should face prejudice in seeking to serve in the judiciary based on race, sex, ethnicity, religion or any other characteristic unrelated to their ability to impartially apply the law in cases that come before them.

35. 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 did not write the passage to which you refer, and I am unsure of the traditional values to which the author was referring.

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.⁷

- 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: As a judicial nominee, it would be inappropriate for me to comment on public statements made by other people, especially on matters of political controversy. *See* Code of Conduct for United States Judges, Canon 5.

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

Response: Please see my response to Question 35.b.i.

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

Response: Yes.

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

Response: I have not spoken to or corresponded with Leonard Leo or Steven G. Calabresi during my selection process. I do not know whether each of the many individuals involved in the selection process are members of the Federalist Society. While I was being considered, I am sure I spoke with members of the Federalist Society.

- 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.

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

Response: Yes, I have been paid honoraria for speaking to student and lawyer chapters since I stepped down as Ohio Solicitor General in 2023. According to my records, I received the following honoraria in the years 2026, 2025, and 2024,

⁷ Donald J. Trump (@realDonaldTrump), TRUTH SOCIAL (May 29, 2025, 8:10 PM), <https://truthsocial.com/@realDonaldTrump/posts/114593880455063168>.

and 2023: \$1,500 in 2026, \$4,500 in 2025, \$4,500 in 2024, and \$1,500 in 2023. I was not allowed to accept honoraria during my service as Solicitor General from January 2019 to October 2023, and I did not do so. I do not have records of having received honoraria before that. To the extent I did, it would have been in connection with the speaking engagements to student and lawyers chapters disclosed in my Senate Judiciary Questionnaire.

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

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

Response: To the best of my recollection, two.

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

Response: I am not aware of which individuals (if any) involved in the selection process are members of Teneo. I am sure I spoke to members of Teneo during the process, as I sometimes speak to other members.

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

Response: No.

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

Response: No.

37. 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: To the best of my knowledge, no.

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

Response: I spoke at a Heritage Foundation event and was interviewed on a podcast affiliated with the Heritage Foundation (SCOTUS 101). Both the event and the interview are disclosed on my Senate Judiciary Questionnaire. I have also participated in moot courts hosted by the Heritage Foundation.

- 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.

- 38. 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: To the best of my knowledge, no.

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

Response: No.

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

Response: No.

- 39. 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: Your question appears to be about America First Legal Foundation. During the selection process, I expressed interest in the nomination and discussed the process with Gene Hamilton, Nick Barry, and Crystal Clanton at the America First Legal Foundation. I may have spoken with other individuals associated with America First Legal Foundation on issues pertaining to legal work in which we are jointly engaged.

- 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: Yes, my firm has worked with America First Legal Foundation on cases and other matters.

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

Response: No.

40. 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: To the best of my knowledge, no.

- 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.

41. 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: To the best of my recollection, no. Because ADF is a frequent litigator, however, it is possible I have communicated about cases in which my firm and ADF were involved or considered becoming involved.

- 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 participated in moot courts hosted by ADF.

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

Response: No.

- 42. 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 knowledge, no individuals associated with the listed organizations were involved in the selection process. I did not speak with Leonard Leo or Carrie Severino during the selection process. I am not aware of the manner in which anyone else to whom I spoke is “associated with these organizations.”

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

Response: To the best of my recollection, no.

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

Response: No.

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

Response: I am not aware of anyone or any group that has made a contribution to any organization in support of my nomination. If confirmed, no advocacy or expenditure related to my nomination will have any bearing on the way I discharge my duties.

- 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: If confirmed, I would evaluate conflicts and recusal issues with reference to 28 U.S.C. § 455, the Code of Conduct for United States Judges, and all other applicable laws, regulations, and rules. It would not be appropriate for me, as a judicial nominee, to forecast how I would resolve any particular conflict or recusal issue. To the extent this question asks whether I personally believe it would be prudent or good policy for such donations to be disclosed, that is a policy matter on which it would be inappropriate for me to opine. *See* Code of Conduct for United States Judges, Canon 5.

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

Response: Please see my answers to Questions 42.d and 42.e.

Nomination of Benjamin Flowers
Nominee to be Circuit Judge for the United States Court of Appeals for the Sixth Circuit
Questions for the Record
Submitted May 27, 2026

QUESTIONS FROM SENATOR WHITEHOUSE

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

1. You wrote on your Substack:

“Timid textualism is not useful for those who wish to reverse . . . the degradation of America’s constitutional order and traditional Western values. Timid textualism will not, to borrow a phrase, Make America Great Again. . . . A court that ‘correctly’ decides cases on narrow grounds, without upsetting long-set but badly flawed precedents, will not be much use in restoring the constitutional order. That is unacceptable for the conservative movement of today.”

- a. What is an example of timid textualism?

Response: In the post to which you refer, I used the phrase in reference to courts’ use of discretion to avoid deciding issues or deciding them narrowly. I was focused in particular on the Supreme Court. Were I to be confirmed as a circuit judge, I would have significantly less discretion because the courts of appeals, unlike the Supreme Court, have no discretion to overrule Supreme Court precedent, very limited discretion to overrule circuit precedent (in the Sixth Circuit, that can be done only en banc), and almost no discretion regarding which cases to hear. More broadly, if confirmed, I would decide all cases according to the law without regard to my policy preferences, the political valence of the case, or any other extraneous factor.

- b. What did you mean when you referred to “the degradation of . . . traditional Western values”?

Response: As I explained to Senator Hirono during my hearing, I was referring to a policy concern that I have heard expressed by some lawyers, and in particular by younger lawyers and law students.

- c. Is it a judge’s job to further what you call the “conservative movement of today”?

Response. No. It is a judge’s job to decide cases correctly according to the law, without regard to his or her political preferences. If I am so fortunate as to be confirmed, I will conduct myself accordingly. As I testified at my hearing, the judge I have been nominated to succeed—Chief Judge Sutton—is among the most respected circuit judges in American history. That is in large part because he treats all parties fairly and decides cases without regard to his policy preferences

or other extraneous factors. Every single time I argued before him, I knew he would rule based on what he believed the law required. If I am confirmed, among my top priorities is ensuring that litigants would say the same thing about me.

2. Is it ever acceptable for litigants to ignore a court order?

Response: Litigants must generally follow court orders issued in a proceeding to which they are a party. The normal recourse for any litigant who disagrees with a judicial order is to seek reconsideration, to appeal, to seek a stay, or to pursue some combination of these options. The same is true for litigants who are Executive Branch officials. Courts have held that parties may refuse to follow court orders only in exceptionally narrow circumstances. For example, parties may defy an order as a means of securing the appeal of an otherwise-unappealable interlocutory order. The Supreme Court recognized this exception in *Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100 (2009), which acknowledged that one “long-recognized option” for appealing interlocutory disclosure orders is to intentionally defy the order, “incur court-imposed sanctions,” and then appeal from the sanctions award. *Id.* at 111. Further, “[i]f a court order issues without personal or subject matter jurisdiction, the decree may be violated without incurring the penalty of criminal contempt.” *In re Establishment Inspection of Hern Iron Works, Inc.*, 881 F.2d 722, 726 (9th Cir. 1989); accord *Ex parte Fisk*, 113 U.S. 713, 714 (1885) (“When, however, a court of the United States undertakes, by its process of contempt, to punish a man for refusing to comply with an order which that court had no authority to make, the order itself, being without jurisdiction, is void, and the order punishing for the contempt is equally void.”). The Supreme Court has also suggested that parties may not be bound to comply with an order where it is “factually impossible” to do so. *United States v. Rylander*, 460 U.S. 752, 757 (1983).

**Nomination of Benjamin Flowers
to be United States Circuit Judge for the Sixth Circuit
Questions for the Record
Submitted May 27, 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: The Constitution says that judges may be appointed only "with the Advice and Consent of the Senate." U.S. Const., art. II, § 2. As a nominee, it would not be appropriate for me to opine on how the Senate discharges that important responsibility, except to say that I appreciate the opportunity to answer questions about my nomination and that I have worked hard to answer appropriately.

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: This nomination is the greatest professional honor of my life. I understand that I am not entitled to be confirmed, and that I have a duty to demonstrate my worthiness for a lifetime appointment. In hopes of demonstrating that worthiness, I am answering questions truthfully and to the best of my ability. Answering to the best of my ability includes avoiding responses that would be inappropriate for a judicial nominee, such as any commentary implying the prejudgment of cases that might come before me were I to be confirmed.

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: I prepared a draft response to these questions after consulting my records, legal precedent, and responses by past nominees addressing similar questions. After receiving limited feedback from people at the Office of Legal Policy at the U.S. Department of Justice, I finalized my answers based on my independent judgment and authorized the answers to be submitted to the Senate Judiciary Committee.

- 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: If both nominees agree with the answers, yes.

- 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: Aside from yes or no answers, I do not believe any of my answers are exact duplicates of answers provided by past nominees.

- 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: At no point during the process that led to my nomination did anyone ask how I would rule on a case or legal matter that might come before me, including about President Trump or his administration.

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

Response: The judges of the Sixth Circuit would be my role models; I have great confidence in their integrity.

- 6. How would you describe your judicial philosophy?

Response: I have said publicly that I am an originalist and a textualist. Were I to be confirmed, this means that I would interpret constitutional and statutory provisions according to their original meanings. But as a lower court judge, I would be bound to, and would, faithfully apply all binding precedent regardless of whether that precedent is originalist in nature. In each case, I would resolve the cases that come before me impartially, without fear or favor to anyone.

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 confirmed to serve as a circuit judge, I would faithfully apply binding Supreme Court precedent interpreting the Fourteenth Amendment. According to the Supreme Court, a right is “fundamental” for purposes of the Due Process Clause of the Fourteenth Amendment if “the right is deeply rooted in our history and tradition ... it is essential to our Nation's scheme of ordered liberty.” *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 237 (2022) (brackets and quotation marks omitted).

- 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: As noted above, the Supreme Court has held that whether a right is “fundamental” depends in part on whether “the right is deeply rooted in our history and tradition.” *Dobbs*, 597 U.S. at 237 (brackets and quotation marks omitted). Any source shedding light on that history and tradition could be relevant. To give one example, the Supreme Court has looked to historical laws. *Id.* at 250–51. The Court has also considered historical evidence relating to the importance traditionally placed on the practice or institution at issue. *See Obergefell v. Hodges*, 576 U.S. 644, 669 (2015). If confirmed, I would faithfully apply all 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: I would faithfully adhere to binding precedent. All Supreme Court precedent is binding on lower courts, including the court to which I am nominated: the United States Court of Appeals for the Sixth Circuit. Within the Sixth Circuit, three-judge panels are also bound by published decisions by prior three-judge panels. *Kerman v. C.I.R.*, 713 F.3d 849, 866 (6th Cir. 2013). If there is no binding Supreme Court or circuit precedent, I would consider out-of-circuit precedent.

- 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 relevant factors brought to my attention. Our system depends heavily on the principle of party presentation. As a result, the parties will typically raise additional factors they wish the courts to consider.

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

Response: Within the Sixth Circuit, a three-judge panel “cannot overrule the decision of another panel. The prior decision remains controlling authority unless an inconsistent decision of the United States Supreme Court requires modification of the decision or [the Sixth Circuit] sitting en banc overrules the prior decision.” *Kerman v. C.I.R.*, 713 F.3d 849, 866 (6th Cir. 2013) (quotation marks omitted). To my knowledge, the Sixth Circuit has not announced a particular standard to govern whether the en banc court should overrule circuit precedent. But Federal Rule of Appellate Procedure 40(b)(2), along with the Sixth Circuit’s Internal Operating Procedures, *see* 6 Cir. I.O.P. 40(b)(1), suggest that en banc review may be appropriate when a panel decision conflicts with Sixth Circuit precedent, conflicts with Supreme Court precedent, conflicts with precedent from another circuit court, or presents questions of exceptional importance.

9. The *New York Times* reported that on March 25, 2026, President Trump stated the following at a National Republican Congressional Committee event: “The time has also come for Republicans to pass a tough new crime bill that imposes harsh penalties for dangerous repeat offenders, cracks down on rogue judges. We got rogue judges that are criminals. They are criminals, what they do to our country. The decisions that they hand down and hurt our country.”

- a. Is it a crime for a judge to rule against President Trump’s desired outcome in a particular case?

Response: This question solicits my opinion on statements by public figures or political controversies. As a judicial nominee, the Code of Conduct and answers given by past nominees counsel against commenting on such statements or matters. *See* Code of Conduct for United States Judges, Canon 5.

- b. Do you think that judges ruling against President Trump’s desired outcome should be “crack[ed] down on”?

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

- c. Is it possible for a judge’s decision to be correct, as a matter of fact and law, even if it differs from President Trump’s desired outcome?

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

- d. Do you agree with President Trump that we need a “tough new crime bill” that “cracks down on rogue judges”?

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

- e. Do you think that rhetoric like the example quoted above could discourage a judge from ruling against President Trump’s desired outcome?

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

- f. If you were confirmed and you ruled against President Trump’s desired outcome in a case, would you consider yourself a “rogue judge[]” and a “criminal[]”?

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

- g. Do you think statements like those made by President Trump quoted above make federal judges more or less safe?

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

10. 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 would evaluate conflicts and recusal issues with reference to 28 U.S.C. § 455, the Code of Conduct for United States Judges, and all other applicable laws, regulations, and rules. It would not be appropriate for me, as a judicial nominee, to forecast how I would resolve any particular conflict or recusal issue were I to be confirmed.

11. 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: Over the course of American history, Congress and the courts have fashioned a complex body of law governing remedies. I would faithfully apply this body of law and all binding precedents interpreting it. As a judicial nominee, it would not be appropriate for me to forecast how I would fashion a remedy in a case involving the Take Care Clause specifically, especially because the appropriate remedy may depend on the facts of the alleged violation. *Cf.* Code of Conduct for United States Judges, Canon 3(A)(6).

12. The 22nd Amendment states: “No person shall be elected to the office of the President more than twice.”

a. Was President Trump elected to the office of the President twice?

Response: Yes.

b. If President Trump were elected again in 2028, how many times in total would he have been elected to the office of the President?

Response: The Twenty-Second Amendment precludes any President, including President Trump, from being elected more than twice.

c. Is President Trump eligible to be elected President for a third term in 2028?

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

13. 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: The question is best answered with reference to the text of the Twelfth Amendment, which says that the “person having the greatest number of votes for President” through the certification process to which you refer “shall be the President, if such number be a majority of the whole number of Electors appointed”

14. At your Senate Judiciary Committee nomination hearing, Senator Blumenthal asked you who won the 2020 election. You began to reply, “Joe Biden was certified”

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: I knew that this question is asked at nearly every hearing, so I prepared to answer it. I spoke with colleagues and past nominees. I participated in mock hearings—I called them “moots” at my hearing, though these exercises are often called “murder boards.” See, e.g., Arlane de Vogue, *How Ketanji Brown Jackson is preparing for questions about her record on crime*, CNN (Mar. 21, 2022), <https://perma.cc/N3J2-E7QX>. I watched past hearings. I reviewed written responses prepared by past nominees. I also reviewed the Code of Conduct for United States Judges and the Twelfth Amendment. I independently determined that the answer I gave was the right one to give.

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: I respectfully disagree with the premise of your question. I did not begin my answer by saying “Joe Biden was certified ...” Instead, I answered as follows:

“Senator Blumenthal, I’ll incorporate the answer that Justice Jackson gave, that Chairman Grassley referred to earlier. It wouldn’t be appropriate for me to comment on the outcomes of any election except to say that, legally speaking, Joe Biden was certified ...”

After Senator Blumenthal reclaimed his time and suggested that Justice Jackson gave a different answer because she was a sitting federal judge at the time, I responded:

“Senator, it’s long been understood that nominees should abide by the same code of ethics that binds sitting judges, so I do think her example’s persuasive and I intend to follow it.”

Senator Blumenthal then again reclaimed his time. When he again asked who won the 2020 election, I responded:

“I’ll again adhere to Justice Jackson’s precedent.”

Nomination Hearing, U.S. Senate Committee on the Judiciary (May 20, 2026), <https://www.judiciary.senate.gov/committee-activity/hearings/nominations-05-20-2026>.

As this shows, I did not begin my response by saying “Joe Biden was certified,” but rather by referring to answers to questions for the record that Justice Jackson submitted after her confirmation hearing in 2022. When asked about whether she had ever commented about the results of the 2016 or 2020 elections, Justice Jackson responded:

Consistent with the Code of Conduct for United States Judges and the positions taken by prior nominees, as a pending judicial nominee and a sitting federal judge, it would be inappropriate for me to publicly weigh [in] any subject of political debate. In my individual capacity, I have had private conversations on a wide variety of topics.

See Ketanji Brown Jackson, Nominee to be Associate Justice of the Supreme Court of the United States at 136–37, <https://perma.cc/77Z7-H69H>.

I discovered these answers while preparing for my hearing. I believed they were sound and determined independently that I would answer as I did. I attempted to

note that Joe Biden was certified just once, because that was a legally correct explanation of the constitutional process would not cause me to “publicly weigh in [on] any subject of political debate.” *Id*; see Code of Conduct for United States Judges, Canon 5.

- 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: No.

15. In a December 20, 2023, post on your Substack titled “Section 3 of the Fourteenth Amendment,” you wrote that “the events at the Capitol on January 6 do not qualify as an ‘insurrection or rebellion’ under Section 3.” Do you stand by that statement?

Response: I acknowledge that I made that comment. I wish to be clear: I categorically condemn violence against police officers and political violence. Nothing in that post to which you refer should be misunderstood to imply otherwise. In that blog post, I was addressing the purely legal question whether the events in question qualified as an “insurrection or rebellion” as those phrases appear in Section 3 of the Fourteenth Amendment. I was doing so in my capacity as a private attorney, not a judicial nominee, relying on arguments advanced by Professor (and former Tenth Circuit judge) Michael McConnell. Now that I am a judicial nominee, I must take care not to forecast how I would resolve issues that might come before me. The Code of Conduct also counsels against commenting on matters that are the subject of pending litigation. See Code of Conduct for United States Judges, Section 3(A)(6). Whether to characterize the events of that day as an “insurrection” is implicated by pending litigation, *see, e.g., Smith v. Trump*, No. 25-cv-03602, 2026 WL 1034931 (D.D.C. Apr. 16, 2026), appeal pending No. 26-5164 (D.C. Cir.), and by potential future litigation that could come before me were I to be confirmed. As such, it would not be appropriate for me to affirm or disavow my previous position. If the issue comes before me, I will fairly consider the parties’ arguments and apply the law to the facts of the case—all judges have a duty to decide cases impartially without regard to arguments they advanced in briefs or academic work before joining the bench, and I will adhere to that duty if I am confirmed.

- a. If you think this question would require you to express an opinion on “political” matters, 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, given your prior directly stated opinion.

Response: Please see my answer to Question 15.

16. 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: This question solicits my personal views on matters of political controversy pertaining to the President's exercise of the pardon power. Further, the effect of the pardons has continued to arise in litigation. *See, e.g., United States v. Ochs*, 2026 WL 1146042 (D.D.C. Apr. 28, 2026). As a judicial nominee, it would be inappropriate for me to comment. *See Code of Conduct for United States Judges, Canons 3(A)(6), 5*

17. 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 answer to Question 16.

18. 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 implicates matters that are subject to pending litigation. *See Perkins Coie LLP v. Dep't of Justice*, No. 25-5241 (D.C. Cir.). Therefore, as a judicial nominee, it would not be appropriate for me to comment. *See Code of Conduct for United States Judges, Canon 3(A)(6)*.

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

Response: The Supreme Court has long held that the Constitution protects the right to interstate travel. *See, e.g., United States v. Guest*, 383 U.S. 745, 759 (1966). If confirmed, I would faithfully apply these precedents and other potentially applicable sources, including the Constitution's text.

- 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: If I am confirmed to serve as a circuit judge, I will be bound by and would follow Supreme Court precedents such as *United States v. Guest*, 383 U.S. 745, 759 (1966) and *Edwards v. California*, 314 U.S. 160, 177 (1941).

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

Response: The Supreme Court has recognized a fundamental right to privacy in certain contexts. *See, e.g., Griswold v. Connecticut*, 381 U.S. 479, 485–86 (1965). Other provisions, including the Fourth Amendment’s protections against unreasonable searches and seizures, also protect privacy.

- 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: The Supreme Court has interpreted the Due Process Clause as guaranteeing a right to use contraceptives. *See Griswold v. Connecticut*, 381 U.S. 479 (1965). I would faithfully apply this and all other Supreme Court precedents.

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

Response: The Due Process Clauses in the Fifth and Fourteenth Amendments apply to all “person[s].” The Supreme Court has held 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). I would faithfully apply this and other Supreme Court precedents if confirmed.

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

Response: The Supreme Court and the Sixth Circuit have interpreted constitutional provisions with reference to their original meanings. *See, e.g., Gamble v. United States*, 587 U.S. 678, 683 (2019) (Double Jeopardy Clause); *United States v. Jones*, 565 U.S. 400, 405–06 (2012) (Fourth Amendment); *District of Columbia v. Heller*, 554 U.S. 570, 576–628 (2008) (Second Amendment); *Crawford v. Washington*, 541 U.S. 36, 50 (2004) (Confrontation Clause). Were I to be confirmed, I would follow these and all other Supreme Court precedents.

- 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: In discerning original public meaning, courts may look to any relevant evidence brought to their attention. You ask for three examples, and I will answer by reference to opinions of the Supreme Court. The Court has determined the original public meaning of statutes and constitutional provisions by looking to: (1) dictionary definitions contemporaneous with the statute’s or provision’s enactment, *see Heller*, 554 U.S. at 581; (2) the way words are used in ordinary writing around the time of enactment, *see, e.g., Whitfield v. United States*, 574 U.S. 265, 267–68 (2015); (3) with respect to constitutional provisions, statutes

enacted and practices followed around the time of the provision's ratification, *see, e.g., Town of Greece v. Galloway*, 572 U.S. 565, 575 (2014).

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

Response: Cases must be decided according to the law. Certain legal doctrines require consideration of consequences. For example, the decision whether to award injunctive relief depends in part on whether the party seeking that relief can show it would be irreparably harmed without an injunction, and whether "the equities and public interest" favor injunctive relief. *Abbott v. League of United Latin Am. Citizens*, 146 S. Ct. 418, 419 (2025) (per curiam).

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

Response: The judicial oath, which requires that judges "faithfully and impartially discharge and perform all the duties incumbent upon them," 28 U.S.C. § 453, requires that judges faithfully and impartially apply the law to the facts of every case before them. Judges may not allow their personal sense of empathy to interfere with the discharge of this obligation.

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

Response: Judges must not allow personal life experiences to interfere with their duty to faithfully and impartially apply the law to the cases that come before them.

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

Response: As a judicial nominee, it would be inappropriate for me to forecast my view on hypothetical matters that may come before me. I would resolve concrete cases and controversies relating to parties' non-compliance with court orders based on the law and the particular facts. Relevant facts may include the reason for non-compliance and the prejudice to the opposing party, among other things.

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

Response: Federal Rule of Appellate Procedure 40(b)(2), along with the Sixth Circuit's Internal Operating Procedures, *see* 6 Cir. I.O.P. 40(b)(1), suggest that en banc review may be appropriate when a panel decision conflicts with Sixth Circuit precedent, conflicts with Supreme Court precedent, conflicts with precedent from another circuit court, or presents questions of exceptional importance.

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

Response: I confess, this is a hard question to answer; I have been blessed to work on many meaningful cases with many excellent attorneys. If I could pick just one, I would choose *Ohio v. Dep't of Lab., Occupational Safety and Health Admin.*, 595 U.S. 109 (2022) . In that case, I led a multi-state coalition in a successful challenge to OSHA's "vaccine mandate." *COVID-19 Vaccination and Testing; Emergency Temporary Standard*, 86 Fed. Reg. 61,402 (Nov. 5, 2021). The case presented important issues about the scope of federal power. I am most proud of this case because of the effort that went into it. On an extremely accelerated timeline, my team and I had to learn, digest, and analyze complex factual issues, draft briefs applying the law to those facts, and prepare and present an oral argument before the Supreme Court. Few things create bonds the way that hard-won success does. I treasure the connections I built with the attorneys, particularly those in the Ohio Solicitor General's office, who worked so hard with me to win this case.

29. Discuss your proposed hiring process for law clerks.

Response: I have not formulated a hiring process, but I expect to conduct interviews in which I test applicants' legal abilities and willingness to disagree with me when they think I am wrong.

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

Response: It would not be appropriate for me to comment on proposed legislation. *See* Code of Conduct for United States Judges, Canon 5. If confirmed, I will ensure that everyone who works for or with me is treated with respect. I will not tolerate discrimination of the sort barred by Title VII.

30. 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: If confirmed, I would lead by example. I have held substantial leadership roles, first as Solicitor General of Ohio and later as a named partner at my firm. In these roles, my top priorities have included fostering an environment in which everyone feels valued and respected. This would remain a top priority were I to be confirmed. And, if confirmed, I would speak with my colleagues to

solicit their advice on other steps I might take to guard against misconduct of any sort.

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

Response: If I am confirmed, I will foster the environment discussed in my previous answer. I also expect to consult with colleagues about the best way to ensure that any concerns about workplace-related conduct are fully addressed. I have worked with or alongside several of the Ohio-based judges on the Sixth Circuit during my time at Jones Day and in the Ohio Attorney General's Office. I have seen the respect with which they treat staff and colleagues. I trust that they will have sound advice on the best ways to address workplace-related concerns.

- 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: I expect that I would, first, confront the judge directly. If the circumstances made that improper or unwise, I would consult with colleagues and report my concerns as appropriate through the proper channels.

31. In his April 9, 2026, Truth Social post announcing your nomination, President Trump wrote: "Ben successfully challenged dangerous and unlawful Policies of the Biden Administration."

- a. Do you agree with President Trump's statement that you "successfully challenged dangerous and unlawful Policies of the Biden Administration"?

Response: I am honored by President Trump's decision to nominate me for a position on the United States Court of Appeals for the Sixth Circuit. Your question solicits my views or interpretations of President Trump's social-media post announcing that appointment. It would not be appropriate for me, as a judicial nominee, to comment on statements or social-media posts by the President or any other political figure. See Code of Conduct for United States Judges, Canon 5.

- b. If so, which "dangerous and unlawful Policies" did you challenge?

Response: See my answer to Question 31.a.

32. On October 24, 2025, you gave a speech at the Toledo Bar Association's Kiroff Bench Bar Conference called "Departmentalism in the Age of Trump." You stated, "[t]he President can veto, or refuse to enforce, unconstitutional laws passed by Congress. And . . . while the President must abide by the court-issued judgments, he may refuse to abide by the reasoning in opinions accompanying those judgments when the reasoning is

contrary to the law. Indeed, he is constitutionally obligated to disregard flawed reasoning that, if followed, would cause him to violate the Constitution. . . . Executive and legislative officials—not to mention state officials—all have responsibilities under our constitutional order. Every one of those officials takes an oath to the United States Constitution. Of course, the Constitution is just as supreme with respect to these officials as it is with respect to judges. This means that these non-judicial officials, when carrying out their duties, must abide by the Constitution. To fulfill this task, these officials must interpret our founding charter. It is, one might say, emphatically their duty to say what the law is when they discharge their obligations. An executive branch official is dutybound not to enforce an unconstitutional law. Congressmen and representatives are dutybound not to enact unconstitutional laws. To discharge those obligations, they too must interpret the Constitution.”

- a. Is it your view that judicial opinions of the federal appellate courts and the U.S. Supreme Court do not create precedent that is binding on government officials in the legislative and executive branches?

Response: Opinions of federal appellate courts and the Supreme Court are binding on the legislative and executive branches in the sense that the holdings of those cases create precedent to which lower courts must adhere in challenges to executive or legislative policies. And as explained in my answer to Question 32.b, government officials that disregard clear holdings may be liable to monetary damages under statutes enacted by Congress. If confirmed to serve as a circuit judge, I would be bound to, and would, faithfully apply binding precedent.

- b. What, in your view, is the significance of the written opinions of the U.S. Supreme Court in cases interpreting the U.S. Constitution if the President (and other government officials) only need to follow the Court’s judgment and are free to advance their own constitutional reasoning and conclusions, even if it contradicts the Court’s opinion?

Response: As I explained in my previous answer, the holdings of written opinions by the Supreme Court bind lower courts. That imposes limits on other government actors irrespective of whether they are bound by the judgment at issue. For one thing, if the President or other government officials act in a manner contrary to a Supreme Court opinion, lower courts would be bound to say so and award appropriate relief in a challenge to the action in question. Further, Congress has enacted laws that allow plaintiffs to seek relief against state officials who violate the Constitution. *See, e.g.,* 42 U.S.C. § 1983. While some defendants may have a “qualified immunity” in these suits, that immunity has been held to be unavailable when officers violate a right that “existing precedent . . . place[s] . . . beyond debate.” *Zorn v. Linton*, 146 S. Ct. 926, 930 (2026) (per curiam) (quotation marks omitted). For these and other reasons, precedent of the U.S. Supreme Court is immensely significant to non-judicial actors regardless of whether they are formally bound by a judgment.

- c. You went on to state, with respect to the issue of birthright citizenship, “[a]s such, there is nothing lawless about the President’s adopting one view as the position of the executive branch—he is dutybound to enforce the Constitution according to his best interpretation, and he interprets it not to bestow birthright citizenship on the children of illegal aliens. The Supreme Court will eventually weigh in. If it agrees with him, there will obviously be no threat to the rule of law from the President’s continuing to enforce the policy. *If it disagrees with him, either in a class action or in an individual suit, the President will be bound to respect that decision with respect to class members or individual plaintiffs who secure judgments.* Unless he disregards such a judgment, his current position poses no threat to the rule of law.” (Emphasis added.)

- A) Is it your view that if the U.S. Supreme Court interprets the U.S. Constitution to bestow birthright citizenship to the children of undocumented immigrants, the executive branch would only need to bestow such citizenship on parties to the suit (or anyone else who went to court to secure such a judgment)?

Response: This question solicits my personal views and seeks my legal opinion on matters that are subject to pending litigation. It also asks me to forecast how I would resolve a category of cases that could come before me were I to be confirmed. Therefore, as a judicial nominee, it would not be appropriate for me to comment. *See Code of Conduct for United States Judges, Canons 3(A)(6) and 5.* If confirmed, I would decide all cases that come before me based on the facts and the law.

33. Along with Ohio Attorney General Dave Yost, you wrote in a Fall 2023 article in the *Harvard Journal of Law & Public Policy Per Curiam* that the *First Step Act* “empowers courts to grant ‘compassionate release’ to prisoners In other words, the Act empowers courts to issue commutations. It thus reflects a profound lack of humility. Congress, apparently frustrated with Presidents’ cautionary approach to commutations, exercised power it lacks: it took from the President, and gave to the courts, the constitutionally assigned responsibility over issuing and denying commutations. The Act’s compassionate-release provisions, by empowering the judiciary to exercise a power that the Constitution gives to the President alone, violates the Constitution. It is terrible policy to boot.”

- a. Given your stated views, would you recuse yourself from cases in which you must review a district court’s decision to grant compassionate release under the *First Step Act*?

Response: To quote then-Justice Rehnquist, I am not aware of any “practice” according to which judges “disqualify[] themselves in cases involving points of law with respect to which they had expressed an opinion or formulated policy prior to ascending to the bench.” *Laird v. Tatum*, 409 U.S. 824, 831 (1972)

(memorandum of Rehnquist, J.). But if confirmed, I would evaluate conflicts and recusal issues with reference to 28 U.S.C. § 455, the Code of Conduct for United States Judges, and all other applicable laws, regulations, and rules. It would not be appropriate for me, as a judicial nominee, to forecast how I would resolve any particular conflict or recusal issue.

- b. Do you still think the *First Step Act* is “terrible policy”?

Response: I made the comment to which you referred while practicing law and before being nominated to bench. Now that I have been nominated, it would not be appropriate for me to comment about policy matters. *See* Code of Conduct for United States Judges, Canon 5.

- c. Do you still think the *First Step Act* “violates the Constitution”?

Response: It would be inappropriate for me to prejudge any matter that may come before me. I would fairly resolve concrete cases and controversies relating to this and all other matters with reference to the Constitution’s text, any applicable statutes or regulations, binding precedent, and any other tools (such as academic scholarship) that might bear on the issue.

I advanced the argument to which you refer as a practicing lawyer. There is a substantial difference between the role of an author or advocate and the role of a judge. All judges who previously litigated cases or composed scholarship have taken positions on legal propositions. Upon taking the bench, they take on a new role: fairly adjudicating cases according to the law, including binding precedent, without regard to any positions they might have advanced as advocates or in scholarship. If I am so fortunate as to be confirmed, I will discharge my duties in the manner just described.

34. You submitted a brief to the U.S. Supreme Court arguing against the participation of transgender women in women’s scholastic sports, referring to them as “males.” In an amicus brief for *Little v. Hecox/West Virginia v. B.P.J.*, you wrote, “[t]o say that a male can compete *as a girl or women* [*sic*] on a female-only team is to communicate that males *can* be girls or women. That is not true. . . . Allowing males to compete as girls and women on female-only teams imparts a false view of reality, in which sex can be rejected or altered to suit individual preference.” (Emphasis in original.)

- a. Would you agree that your work on this matter creates at least the appearance of partiality with respect to cases involving the rights of transgender people?

Response: No.

- b. What would you say to a transgender litigant who feels they would not receive a fair process from you, given your stated beliefs about transgender identity?

Response: The first thing I would do, before saying anything, is ensure that the litigant is treated with respect. I was blessed to work for Judge Sandra Ikuta. I have written publicly about the immense respect she had for parties. See Ben Flowers, *Judge Sandra Ikuta's Legacy of Service*, National Review (Nov. 10, 2025), <https://www.nationalreview.com/bench-memos/judge-sandra-ikutas-legacy-of-service/>. That respect translated to the way she treated litigants in court. I will aim to emulate this aspect of her legacy.

Beyond this, I would explain to the hypothetical transgender litigant that there is a difference between advocacy and adjudication. Advocates must vigorously advance their clients' positions. In the brief you quote, I did just that on behalf of my client, the United States Conference of Catholic Bishops. I would explain that nearly all judges have taken positions in litigation on matters that later come before them as judges. Our system trusts that judges will fairly adjudicate those issues without regard to positions they took as practicing attorneys in the past. In my experience, judges in our system do just that. I will dedicate myself to doing the same.

- c. If you are confirmed, will you recuse yourself from cases involving the rights of transgender people?

Response: Please see my answers to Questions 33.a and 33.b.

35. In a June 13, 2025, post on your Substack called "Some thoughts on the future of textualism," you wrote, "[t]imid textualism is not useful for those who wish to reverse, not just stop, the degradation of America's constitutional order and traditional Western values. Timid textualism will not, to borrow a phrase, Make America Great Again. Only judges committed to applying textualism aggressively are up to the task. Those of us who support textualism must therefore insist on its aggressive application; bluntly put, the political support needed to appoint textualist judges will wither unless textualist judges aggressively exercise what discretion they have."

- a. Do you believe that federal judges should modulate how "aggressively" they "exercise what discretion they have" in applying textualism in order to bolster "the political support needed to appoint textualist judges"?

Response: I agree with the Supreme Court that judges must decide cases impartially and pursuant to the law, and that courts have "no authority to let" political concerns "influence [their] decision[s]." *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 292 (2022). If I were so fortunate as to be confirmed, I would conduct myself accordingly.

- b. Do you believe that it is, or should be, part of the role of federal judges to "reverse, not just stop, the degradation of America's constitutional order and traditional Western values"?

Response: The role of a federal judge is to correctly decide cases that come before him or her according to law, without fear or favor to anyone. If your question implies that I argued judges should act in an outcome-oriented fashion, I respectfully reject that characterization. In fact, the blog post specifically rejects ends-driven judging:

Where, then, does the frustration [with textualism] come from? I see three sources.

The first is that textualism will not always produce results we like. If laws are binding and mean what they were originally understood to mean, then bad laws will produce bad results. To this, I have no solution except to say that the alternative is to abandon law altogether. Assuming we want to be governed by laws and not by the whims of our leaders, we have no choice but to accept that we (and our leaders) will sometimes be blocked from doing things we would like. But the alternatives are anarchy and tyranny, and neither is preferable to the rule of law.

The judicial oath requires that judges “faithfully and impartially discharge and perform all the duties incumbent upon them.” 28 U.S.C. § 453. And the role of a judge more broadly is to faithfully and impartially apply the law to the facts of every case before them. I will do so if confirmed.

- c. Do you believe that it is, or should be, part of the role of federal judges to “apply[] textualism aggressively” so that they can help “Make America Great Again”?

Response: Please see my answer to Question 35.b.

- d. In confirmed, would you “apply[] textualism aggressively” so that you can help “Make America Great Again”?

Response: Please see my answer to Question 35.b.

36. Along with Kevin King, you wrote in a September 4, 2016, op-ed regarding remarks made by a candidate for the U.S. Senate after Justice Antonin Scalia’s death, “[n]o one who would cheer the death of so principled and passionate a public servant deserves to represent [Ohio].”

- a. As a general matter, would you consider an individual who was the second-longest serving Director of the Federal Bureau of Investigation, held several government positions across five decades including U.S. Attorney and U.S. Assistant Attorney General, and received a Bronze Star and a Purple Heart for his service as a U.S. Marine Corps officer during the Vietnam War a “principled and passionate public servant”?

Response: This question, when viewed in light of the question below, solicits my opinion on statements by public figures or political controversies. As a judicial nominee, the Code of Conduct and answers given by past nominees counsel against commenting on such statements or matters. *See* Code of Conduct for United States Judges, Canon 5.

- b. The description in (a) applies to former Special Counsel Robert Mueller. On March 21, 2026, President Trump posted on Truth Social, “Robert Mueller just died. Good, I’m glad he’s dead.” Would you agree President Trump was “cheer[ing] the death” of Mueller?

Response: This question solicits my opinion on statements by public figures or political controversies. As a judicial nominee, the Code of Conduct and answers given by past nominees counsel against commenting on such statements or matters. *See* Code of Conduct for United States Judges, Canon 5.

- 37. In your Senate Judiciary Questionnaire, you note that you have been a member since 2025 of the Teneo Network, an organization that “exist[s] to Recruit, Connect, and Deploy talented conservatives who lead opinion and shape the industries that shape society.”

- a. Do you think it is appropriate for a federal judge to be a member of such an organization?

Response: If I am confirmed, I will consult with colleagues and ethics officials about this.

- b. If you are confirmed, will you discontinue your membership in the Teneo Network?

Response: Please see my answer to Question 37.a.

Questions for the Record for Benjamin Flowers
Submitted by Senator Richard Blumenthal
May 27, 2026

1. 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: As a judicial nominee, it would not be appropriate for me to prejudge a hypothetical recusal issue. I firmly believe, however, that both actual impartiality and the appearance of impartiality are critical to the judicial branch. If confirmed, I will address all potential conflicts and recusal questions with reference to 28 U.S.C. § 455, the Code of Conduct for United States Judges, and any other applicable laws, regulations, or rules governing conflicts and recusals.

- 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: Please see my answer to Question 1.

- 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: Please see my answer to Question 1.

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

Response: Please see my answer to Question 1.

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

Response: If confirmed, I will faithfully adhere to all ethical rules and responsibilities, including those regulating *ex parte* communications.

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

Response: Please see my answer to Question 2.

- 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: If confirmed, I will faithfully adhere to all ethical rules and responsibilities, including those regarding meetings or communications of the sort about which you ask. More generally, I will view maintaining the integrity of the federal bench as among my most important responsibilities.

- 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: If confirmed, I will faithfully adhere to all ethical rules and responsibilities, including those regulating what judges may say about actual or pending litigation. As a practicing lawyer, I have trusted the judges before whom I appeared to fairly and impartially adjudicate my cases. In my opening statement, I mentioned Chief Judge Sutton as a model judge in this respect. If confirmed, I will conduct myself accordingly.

- 3. 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: If confirmed, I will faithfully adhere to all ethical rules and responsibilities, including those regulating the acceptance of 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 faithfully adhere to all ethical rules and responsibilities, including those regulating the acceptance of travel, hospitality, or entertainment. As I explained in my response to Question 2.b, maintaining the integrity of the federal bench will be among my very highest priorities if I am confirmed.

- 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 I am confirmed, I will adhere to all ethics rules and responsibilities, including those regarding teaching, speaking, or writing

activities, and in particular I will work to ensure any such activities do not create conflicts with my judicial duties.

4. 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: As a judicial nominee, I cannot weigh in on the wisdom of the legislation to which you refer. *See* Code of Conduct for United States Judges, Canon 5. I agree that the Supreme Court has said the following about the contempt power:

The power to punish for contempts is inherent in all courts; its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders, and writs of the courts, and consequently to the due administration of justice.

Ex parte Robinson, 86 U.S. 505, 510 (1873). If I am so fortunate as to be confirmed, I will adhere to this and all other Supreme Court precedents, including in appeals of cases relating to 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: As a judicial nominee, it would be inappropriate for me to address legislative changes to the contempt power, both because that is a matter of ongoing political controversy, *see* Code of Conduct for United States Judges, Canon 5, and because it would not be appropriate for me to forecast my views on matters that, were I confirmed, could come before me in the event such legislation passes.

5. 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: Courts have a variety of tools at their disposal for enforcing orders. For example, the Sixth Circuit has held that it may reassign cases to a new district-court when the original judge refused to follow a Sixth Circuit order. *See United States v. Schrank*, 975 F.3d 534, 537 (6th Cir. 2020). Other examples of tools for enforcing judicial orders include the imposition of sanctions and the initiation of contempt proceedings.

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: The normal recourse for any litigant who disagrees with a judicial order is to seek reconsideration, to appeal, to seek a stay, or to pursue some combination of these options. The same is true for litigants who are Executive Branch officials. Courts have held that parties may refuse to follow court orders only in exceptionally narrow circumstances. For example, parties may defy an order as a means of securing the appeal of an otherwise-unappealable interlocutory order. The Supreme Court recognized this exception in *Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100 (2009), which acknowledged that one “long-recognized option” for appealing interlocutory disclosure orders is to intentionally defy the order, “incur court-imposed sanctions,” and then appeal from the sanctions award. *Id.* at 111. Further, “[i]f a court order issues without personal or subject matter jurisdiction, the decree may be violated without incurring the penalty of criminal contempt.” *In re Establishment Inspection of Hern Iron Works, Inc.*, 881 F.2d 722, 726 (9th Cir. 1989); accord *Ex parte Fisk*, 113 U.S. 713, 714 (1885) (“When, however, a court of the United States undertakes, by its process of contempt, to punish a man for refusing to comply with an order which that court had no authority to make, the order itself, being without jurisdiction, is void, and the order punishing for the contempt is equally void.”). The Supreme Court has also suggested that parties may not be bound to comply with an order where it is “factually impossible” to do so. *United States v. Rylander*, 460 U.S. 752, 757 (1983).

- 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 answer to Question 5.b.

- d. What would make a court order unlawful?

Response: People may describe a court order as “unlawful” to express the view that the order is contrary to substantive law or issued after a procedurally flawed process. They may also use the word “unlawful” to describe orders courts lack jurisdiction to issue. And there may be still other senses in which the word is used in reference to court orders. The meaning is therefore context-dependent.

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

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

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

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

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

Response: No, I was at my home in Ohio.

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

Response: Please see my answer to Question 6.

- 7. During your time in the Ohio Solicitor General’s Office, you defended Ohio’s abortion restrictions and challenged the standing of abortion providers on multiple occasions. If confirmed, how can future litigants trust that you will remain unbiased on reproductive rights issues?

Response: As Ohio Solicitor General, my duty was to defend duly enacted state legislation. I did so to the best of my abilities. But there is a difference between the role of an advocate and the role of a judge. All judges who previously litigated cases have taken positions on behalf of clients. Upon taking the bench, they take on a new role: fairly adjudicating cases according to the law, including binding precedent, without regard to any positions they might have advanced as advocates. If I am confirmed, I will discharge my duties in the manner just described. I hope that, by demonstrating my commitment to this role, litigants will trust my impartiality, just as I have trusted the impartiality of judges before whom I appeared.

Senator Mazie K. Hirono
Senate Judiciary Committee

Nomination Hearing
Questions for the Record for Benjamin Michael Flowers

1. At your nomination hearing, in response to my questions regarding an amicus brief you authored on behalf of Ohio in support of the defendant-appellee rapist’s position in *Brandt v. Pompa*, you explained, “All I was doing was my job which was to defend the constitutionality of the law in question.”

a. Does Ohio file an amicus brief in every Ohio Supreme Court case where the constitutionality of an Ohio statute is in question?

Response: Our general practice was to file an amicus brief in every Ohio Supreme Court case in which the constitutionality of a state law was challenged, at least where the constitutional arguments were serious. I do not recall any such case in which our office did not file an amicus brief, though it is possible that examples exist. The ultimate decision whether to file rested with the Attorney General. Attorney-client privilege precludes me from disclosing any advice I provided the Attorney General regarding this or other cases.

I wish to stress that the brief to which you refer specifically criticized the law on policy grounds and expressly urged the legislature to change the law; any suggestion that our brief sought to diminish the horror of sexual assault mischaracterizes the brief’s contents. To illustrate the point, I am copying the introduction of the brief for your review.

It has been suggested that every judge be “given a stamp that read[s] ‘stupid but constitutional.’” *Brown v. Chicago Bd. of Educ.*, 824 F.3d 713, 714 (7th Cir. 2016) (citation omitted). This tragic case “provides another illustration of” the need for such a tool. *Id.*

The psychological trauma of sexual assault can exceed, even overshadow, the physical trauma. So it is surprising—some might even say callous—that Ohio law caps non-economic damages for severe psychic injury, but not for severe physical injury. After all, “psychological injuries can be as real as physical injuries.” *McCrone v. Bank One Corp.*, 107 Ohio St. 3d 272, 2005-Ohio-6505 ¶39 (Lundberg Stratton, J., concurring). “Emotional injury can be as severe and debilitating as physical harm”; it is equally “deserving of redress.” *Schultz v. Barberton Glass Co.*, 4 Ohio St. 3d 131, 135 (1983). So the damages cap, in its application to the psychological damages of rape victims, is incredibly foolish.

But—and that conjunction is the point of this brief—that foolish policy is nonetheless constitutional. “[T]he people of Ohio conferred the authority to legislate” on the General Assembly. *State v. South*, 144 Ohio St. 3d 295, 2015-Ohio-3930 ¶28 (O’Connor, C.J., concurring). The legislature, therefore, is the branch that must make the hard choices about how to shape “Ohio’s tort law to meet the needs of our citizens.” *Groch v. Gen. Motors Corp.*, 117 Ohio St. 3d 192, 2008-Ohio-546 ¶102; *New Riegel Local Sch. Dist. Bd. of Educ. v. Buehrer Grp. Architecture & Eng’g, Inc.*, 157 Ohio St. 3d 164, 2019-Ohio-2851 ¶54 (Stewart, J., dissenting). That remains the case even when judges believe legislation “fails to embody the highest wisdom or provide the best conceivable remedies,” because the “wisdom and the policy of” legislation is “not for [courts] to judge.” *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 550–51 (1949). A court might “urge ... legislators” to treat physical and mental injuries identically. *McCrone*, 107 Ohio St. 3d 272 ¶42 (Lundberg Stratton, J., concurring). And the Attorney General, for his part, urges the legislature to lift the damages cap in civil cases brought against rapists. But the Constitution permits neither the judiciary nor the executive to change the law—that duty falls to the legislature.

To be sure, the legislature must exercise its policymaking power in a manner consistent with the Constitution. But here, it has. For one thing, the damages cap rationally relates to a legitimate government purpose (as all laws must): even in its application to tragic cases like this one, it protects against the risk that a jury presented with a suffering victim will award more than is necessary to fully compensate that victim. Beyond that, the law does not run afoul of any other constitutional provisions. The law accords with the remedy language in Article I, Section 16 because it does not reduce a jury award to zero. The law does not invade the jury right, because it merely assigns the legal consequences to a jury’s factual conclusions rather than replace those conclusions with those of another decisionmaker. Finally, the law satisfies equal-protection principles because it is rational to distinguish physical from non-physical harm.

- b. In advance of filing the amicus brief in *Brandt v. Pompa*, did you (or did you direct any other employees of the Ohio Attorney General’s Office) communicate about case with counsel for or employees or representatives of:**
- i. the Ohio Chamber of Commerce;**
 - ii. the Ohio Association of Civil Trial Attorneys;**
 - iii. Product Liability Advisory Council, Inc.;**
 - iv. the Chamber of Commerce of the United States of America;**
 - v. NFIB Small Business Legal Center;**
 - vi. American Tort Reform Association;**
 - vii. Coalition for Litigation Justice, Inc.; or**
 - viii. American Property Casualty Insurance Association?**

Response: I do not recall speaking or directing anyone to speak with these or any other outside groups before filing, though I no longer have access to records that would enable me to confirm this.

2. At your nomination hearing, you faced a number of questions regarding a blog post you authored on June 13, 2025 titled “Some thoughts on the future of textualism.”
 - a. In response to my question about the post, you stated, “I was not, to be clear, referring to my views. I was addressing the views of many young lawyers who I have heard express these concerns and based on those concerns express skepticism about textualism. I was not advocating that courts set out to do this.” The third paragraph of your post states, referring to talk among younger conservative lawyers that they may wish to jettison textualism:

That would be a mistake. And it is a mistake that **I think** can be averted by appreciating that textualism is [sic] necessary but insufficient condition for good judging. Timid textualism is not useful for those who wish to reverse, not just stop, the degradation of America’s constitutional order and traditional Western values. Timid textualism will not, to borrow a phrase, Make America Great Again. Only judges committed to applying textualism aggressively are up to the task. **Those of us who support textualism must therefore insist** on its aggressive application; bluntly put, the political support needed to appoint textualist judges will wither unless textualist judges aggressively exercise what discretion they have.”¹

- i. **If you were not expressing your own views, why did you write (on your personal blog) the words, “I think” and “those of us who support textualism must therefore insist”?**

Response: The blog post did express some of my own views, including support for textualism, and I did not testify otherwise at the hearing. The question to which I responded was as follows:

“In that post you addressed textualist judges and you wrote ‘timid textualism is not useful for those who wish to reverse, not just stop, the degradation of America’s constitutional order and traditional Western values.’ Mr. Flowers, can you list some of the traditional Western values that courts have a role in restoring and I assume that should you be confirmed that you will be a judge, you will be a judge that will seek to restore traditional Western values in a non-timid textualism, so can you tell me what you consider to be traditional Western values?”

¹ See <https://scoho.substack.com/p/some-thoughts-on-the-future-of-textualism> (emphasis added).

I answered as follows:

“Senator, one example of that would be freedom of speech. But I was not, to be clear, referring to my views, I was addressing the views of many young lawyers who I’ve heard express these concerns, and based on these concerns express concerns about textualism. I was not advocating that courts set out to do this, and as a judge, as a circuit judge, I would faithfully apply the law and abide by Supreme Court precedent.”

I stand by my testimony. When I said I was not “referring to my views,” I was responding to the portion of your question about the desire for a restoration of traditional Western values. My testimony accurately describes what the blog says, as the following excerpt shows:

Timid textualism is not useful for *those* who wish to reverse, not just stop, the degradation of America’s constitutional order and traditional Western values. (Emphasis added).

As I testified, these and other concerns are concerns I have heard expressed, in particular, by younger attorneys and law students. (As the second paragraph of the blog makes clear: “More precisely, more and more (mostly younger) right-leaning lawyers talk as though they want to jettison ‘textualism ...’”). The blog argues that “those” who hold these views about the degradation of traditional Western values ought not reject textualism. I did not address my own views on that matter in the blog post or at my hearing, and it would not be appropriate for me to offer such views as a judicial nominee. *See* Code of Conduct for United States Judges, Canon 5.

ii. **Do you believe in an “aggressive” application of textualism?**

Response: As I testified, if confirmed, I would faithfully apply the law and abide by Supreme Court precedent.

iii. **What role, if any, do you believe textualism has to play in “Mak[ing] America Great Again”?**

Response: Judges are not entrusted with the power to make policy or pursue particular policy outcomes. They are entrusted to fairly and impartially decide the cases that come before them based on law. If confirmed, I would carry out my responsibilities accordingly.

b. You listed “freedom of speech” as one of the “traditional Western values” that is being “degrad[ed].” **How is freedom of speech being degraded in our country?**

Response: Please see my answer to Question 2.a.i. I did not testify that freedom of speech is being degraded. Rather, when you asked me to identify what I consider to be a traditional Western value, I responded that freedom of speech is one example. So too are other principles contained in the Declaration of Independence, the Bill of Rights, and the Reconstruction Amendments, to name but three sources.

- c. Please list any other “traditional Western values” that you believe are being degraded in our country.**

Response: Please see my answer to Question 2.b. Insofar as you are seeking my personal opinions on matters of policy or political controversy, it would not be appropriate for me to answer as a judicial nominee. *See* Code of Conduct for United States Judges, Canon 5.

Nomination of Benjamin M. Flowers
United States Court of Appeals for the Sixth Circuit
Questions for the Record
Submitted May 27, 2026

QUESTIONS FROM SENATOR BOOKER

1. Explain the factors you would consider, if you are confirmed, to determine whether to recuse yourself in matters involving former clients, recent legal work and advocacy, and parties with whom you have had substantial financial relationships.

Response: If confirmed, I would evaluate conflicts and recusal issues with reference to 28 U.S.C. § 455, the Code of Conduct for United States Judges, and all other applicable laws, regulations, and rules.

2. If you are confirmed, how would you handle a request from President Trump, or anyone affiliated with him acting on his behalf, to decide a matter in a way that would benefit the President personally, financially, or politically?

Response: If confirmed, I will decide all cases according to the law, without regard to the identities of the parties involved. *See* 28 U.S.C. § 453 (judicial oath). If confirmed, I will rigidly adhere to all ethical duties and responsibilities.

- a. Would you report such a request to the Chief Judge of your Circuit? To the Judicial Council of the Second Circuit? Why or why not?

Response: If confirmed, I will rigidly adhere to all ethical duties and responsibilities, including any responsibilities to report *ex parte* communications, and I will make any reports in accordance with applicable policies and procedures. (I do not believe it would be appropriate to make a report to the Judicial Council of the Second Circuit, as I have been nominated to the United States Court of Appeals for the Sixth Circuit.)

- b. What ethical obligations govern your response to such a request?

Response: Please see my answer to Question 2.a.

- c. Do you believe existing recusal and conduct rules are sufficient to address this scenario?

Response: As a judicial nominee, it would be inappropriate for me to address the sufficiency of existing recusal and conduct rules, because it is a matter of ongoing political controversy, *see* Code of Conduct for United States Judges, Canon 5, and because it would not be appropriate for me to forecast my views on matters that could come before me were I to be confirmed.

3. President Trump has repeatedly responded to adverse judicial rulings by threatening sitting judges, including calling for their impeachment and publicly disparaging them by name.

- a. Do you believe those statements are consistent with the rule of law?

Response: As a judicial nominee, it would be inappropriate for me to opine on a political issue or a statement by any political figure. *See* Code of Conduct for United States Judges, Canon 5.

- b. If you were to rule against the Administration and face similar attacks, would you take any action in response?

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

- c. Do you believe a President's public attacks on the judiciary constitute an attempt to interfere with the independence of the federal courts?

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

- d. Are you aware of any ethical obligation on the part of judges to speak out when the independence of the judiciary is threatened by the political branches?

Response: I am not aware of any statute, provision in the Code of Conduct for United States Judges, or other rule that obligates judges to "speak out when the independence of the judiciary is threatened by the political branches." If confirmed, I will rigidly adhere to all ethical duties and responsibilities.

4. Have you ever discussed with President Trump, or any person associated with him or his Administration, pursuing a nomination to the U.S. Supreme Court? Describe the nature of the discussion, the name of the individual, and the date of the discussion.

Response: No.

5. 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 presume procedures are in place to effectively address that situation if it arose, and I would defer to this Committee to follow those procedures. But as a judicial nominee, it would be inappropriate for me to opine on this hypothetical political and legal dispute. *See* Code of Conduct of United States Judges, Canons 3, 5.

6. 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: Please see my answer to Question 5.

7. How would you characterize your judicial philosophy?

Response: I have said publicly that I am an originalist and a textualist. This means that, were I to be confirmed, I would interpret constitutional and statutory provisions according to their original meanings. But as a lower court judge, I would be bound to, and would, faithfully apply all binding precedent regardless of whether that precedent is originalist or textualist in nature. I would resolve the cases that come before me impartially, without fear or favor to anyone.

8. What do you understand originalism to mean?

Response: Originalism is a jurisprudential theory according to which the meaning of constitutional provisions is fixed at the time of ratification.

9. Do you consider yourself an originalist?

Response: Please see my answer to Question 7.

10. What do you understand textualism to mean?

Response: Textualism is a jurisprudential theory according to which the meaning of legal texts, including statutes and regulations, is fixed at the time of enactment.

11. Do you consider yourself a textualist?

Response: Please see my answer to Question 7.

12. 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: Statements of intent expressed by individual legislators are not law, but the Sixth Circuit has said that courts “may look to legislative history for *evidence* of a word’s meaning in a statute when it was adopted.” *United States v. Wilkes*, 78 F.4th 272, 283 (6th Cir. 2023). I would faithfully apply this and any other binding precedents relating to legislative history.

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

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

13. According to an academic study, Black men were 65 percent more likely than similarly-situated white men to be charged with federal offenses that carry harsh mandatory minimum sentences.¹

a. What do you attribute this to?

Response: As a judicial nominee, it would be inappropriate to offer my view on a policy issue. *See* Code of Conduct of United States Judges, Canon 5.

14. A recent report by the United States Sentencing Commission observed demographic differences in sentences imposed during the five-year period studied, with Black men receiving federal prison sentences that were 13.4 percent longer than white men.²

a. What do you attribute this to?

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

15. 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: Federal judges must fairly apply the law to all parties without regard to race. *See, e.g.,* 28 U.S.C. § 453. If a criminal defendant argues that a government actor impermissibly considered the defendant's race in making a discretionary decision, courts must fairly adjudicate that case according to the facts and the law.

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

Response: No one should face prejudice in seeking to serve in the judiciary based on race, sex, ethnicity, religion, or any other characteristic unrelated to their ability to impartially apply the law in cases that come before them.

17. 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.

¹ Sonja B. Starr & M. Marit Rehani, *Racial Disparity in Federal Criminal Sentences*, 122 J. POL. ECON. 1320, 1323 (2014).

² U.S. SENTENCING COMM'N, DEMOGRAPHIC DIFFERENCES IN SENTENCING 2 (Nov. 2023), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2023/20231114_Demographic-Differences.pdf.

If you have not disclosed a copy of the publication or a transcript of the statement to the Judiciary Committee, attach a copy or link to the materials and 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, along with the supplements and materials I submitted to this Committee, contains the most exhaustive, up-to-date collection of my published written work, speeches, and presentations that may have addressed the topics listed above. I have just one update. While reviewing my records in responding to the Questions for the Record, I discovered a previously undisclosed article that I inadvertently failed to disclose on my Senate Judiciary Questionnaire: *FLOWERS: Businesses Be Warned—Your Lawyers Are Pushing A Left-Wing Agenda*, The Daily Caller, Jan. 26, 2024, available at: <https://dailycaller.com/2024/01/26/flowers-biglaw-amlaw-100-liberal-pro-bono-amicus-briefs/>. I had no memory of the article, which did not appear in online search engines or my original review of my records.

As the Questionnaire shows, my written works and oral presentations almost always related to law, recent judicial decisions, and my work as Solicitor General. As a result, a large percentage of the publications and speeches disclosed on my Questionnaire might have involved these topics. It is, therefore, not possible to provide a more granular answer.

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

Response: Generally, a litigant must follow court orders issued in a proceeding to which the litigant is a party. The normal recourse for any litigant who disagrees with a judicial order is to seek reconsideration, to appeal, to seek a stay, or to pursue some combination of these options. The same is true for litigants who are Executive Branch officials. Courts have held that parties may refuse to follow court orders only in exceptionally narrow circumstances. For example, parties may defy an order as a means of securing the appeal of an otherwise-unappealable interlocutory order. The Supreme Court recognized this exception in *Mohawk*

Indus., Inc. v. Carpenter, 558 U.S. 100 (2009), which acknowledged that one “long-recognized option” for appealing interlocutory disclosure orders is to intentionally defy the order, “incur court-imposed sanctions,” and then appeal from the sanctions award. *Id.* at 111. Further, “[i]f a court order issues without personal or subject matter jurisdiction, the decree may be violated without incurring the penalty of criminal contempt.” *In re Establishment Inspection of Hern Iron Works, Inc.*, 881 F.2d 722, 726 (9th Cir. 1989); accord *Ex parte Fisk*, 113 U.S. 713, 714 (1885) (“When, however, a court of the United States undertakes, by its process of contempt, to punish a man for refusing to comply with an order which that court had no authority to make, the order itself, being without jurisdiction, is void, and the order punishing for the contempt is equally void.”). The Supreme Court has also suggested that parties may not be bound to comply with an order where it is “factually impossible” to do so. *United States v. Rylander*, 460 U.S. 752, 757 (1983).

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

Response: I have been nominated to an appellate court. Therefore, if confirmed, my primary role regarding rulings related to contempt would involve reviewing orders entered by district courts. According to the Sixth Circuit, a “party that seeks civil contempt sanctions must demonstrate by clear and convincing evidence that the opposing party knowingly violated a definite and specific order of the court.” *Gascho v. Glob. Fitness Holdings, LLC*, 875 F.3d 795, 800 (6th Cir. 2017) (quotation marks omitted). “The burden of showing that an order is definite and specific is heavy.” *Id.* The Sixth Circuit has also “stated that the elements for criminal contempt under [18 U.S.C. § 401(3)] are that the defendant (1) had notice of a reasonably specific court order, (2) disobeyed it, and (3) acted with intent or willfulness in doing so.” *United States v. Hendrickson*, 822 F.3d 812, 820 (6th Cir. 2016). “Because criminal contempt is a crime in the ordinary sense, the Supreme Court has stressed that constitutional protections for criminal defendants apply in nonsummary criminal contempt prosecutions just as they do in other criminal prosecutions.” *Clapper v. Clark Dev., Inc.*, 747 F. App’x 317, 323 (6th Cir. 2018) (quotation marks omitted). If confirmed, I will adhere to all binding precedents about contempt.

- 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? Provide each one and the justification.

Response: Please see my answer to Question 18.

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

Response: Article II, § 3 of the Constitution requires the President to “take Care that the Laws be faithfully executed.” Questions pertaining to how this Take Care power interacts with other powers vested in the executive branch—for example, that branch’s “exclusive authority and absolute discretion to decide whether to prosecute a case,” *United States v.*

Nixon, 418 U.S. 683, 693 (1974)—have been, and are currently, the subject of litigation. See, e.g., *United States v. Texas*, 599 U.S. 670, 678–79 (2023). As a judicial nominee, it would be inappropriate for me to forecast how I would resolve these or other disputes that may come before me if I am confirmed. See Code of Conduct of United States Judges, Canon 3.

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

Response: As a judicial nominee, it would be inappropriate for me to opine on matters that are the subject of pending or impending litigation and are issues of political controversy. See Code of Conduct for United States Judges, Canons 3(A)(6), 5.

21. 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 answer to Question 20.

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

Response: The Supremacy Clause of the Constitution says:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U.S. Const. art. VI, § 2. The Supreme Court has explained that the Clause “creates a rule of decision” under which courts “must not give effect to state laws that conflict with federal laws.” *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 324 (2015). If confirmed, I will faithfully apply this and all other binding Supreme Court precedents.

23. Does the U.S. Constitution apply to non-citizens present in the United States?

Response: Some provisions of the Constitution apply to citizens and non-citizens alike. For example, the “Fifth Amendment’s Due Process Clause forbids the Government to ‘deprive’ any ‘person ... of ... liberty ... without due process of law.’” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (brackets omitted, emphasis added). This clause, the Supreme Court has said, “applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” *Id.* at 693. Other provisions apply only to citizens. For example, the Twenty-Sixth Amendment provides that the “right of *citizens* of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.” U.S. Const. amend. XXVI, § 1 (emphasis added).

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

Response: Article I, § 1 of the Constitution vests “[a]ll legislative Powers herein granted ... in a Congress of the United States. “This text,” the Supreme Court has explained, “permits no delegation of those powers.” *Whitman v. Am. Trucking Ass’ns*, 531 U.S. 457, 472 (2001). But the Court has also said that Congress may vest agencies with the power to implement statutes through rulemaking, provided it “lay[s] down by legislative act an intelligible principle to which the person or body authorized to act is directed to conform.” *Id.* (brackets and quotation marks omitted). If confirmed, I will faithfully apply this and all other binding Supreme Court precedents.

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

Response: Yes, *Brown v. Board of Education* was correctly decided. Although it is generally inappropriate for me, as a judicial nominee, to comment on the merits of the Supreme Court’s binding precedents, prior nominees have made an exception to this practice for *Brown v. Board of Education*, and I will join them.

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

Response: *Griswold* held that the Due Process Clause of the Fourteenth Amendment protects a right to use contraceptives. *Griswold* is binding precedent. As such, I would faithfully apply it if confirmed.

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

Response: *Lawrence* held that laws prohibiting same-sex intimacy violate the Fourteenth Amendment. *Lawrence* is binding precedent. As such, I would faithfully apply it if confirmed.

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

Response: In *Obergefell*, the Supreme Court held that the Fourteenth Amendment entitles same-sex couples to marry on the same terms as opposite-sex couples. It also held that States must recognize same-sex marriages performed in other States. *Obergefell* is binding precedent. As such, I would faithfully apply it if confirmed.

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. A response that references only certification will be treated as a refusal to answer.

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

Response: Joe Biden was certified the winner of the 2020 election. To the extent this question asks for my opinion about the existence or non-existence of fraud, election irregularities, or other matters pertaining to the fairness or integrity of the election, I agree with Justice Ketanji Brown Jackson who, in her responses to this Committee’s questions for the record pertaining to the 2016 and 2020 elections, explained that, under the Code of Conduct for United States Judges, it is inappropriate for judicial nominees to comment on election results.

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

Response: Please see my previous answer.

29. The 22nd Amendment says that “no person shall be elected to the office of the President more than twice.”³

- a. Do you acknowledge that this is the law of the land?

Response: Yes. *See* U.S. Const. art. VI, cl. 2.

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

Response: President Trump was certified as the winner of the 2016 election, and thus “elected” President as that word is used in the Twenty-Second Amendment.

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

Response: Please see my answer to Question 29.b. To the extent this question asks for my opinion about the existence or non-existence of fraud, election irregularities, or other matters pertaining to the fairness or integrity of the election, I agree with Justice Ketanji Brown Jackson who, in her responses to this Committee’s questions for the record pertaining to the 2016 and 2020 elections, explained that under the Code of Conduct for United States Judges, it is inappropriate for judicial nominees to comment on election results.

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

Response: President Trump was certified as the winner of the 2024 election, and thus “elected” President as that word is used in the Twenty-Second Amendment.

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

³ U.S. CONST. amend. XXII.

Response: Please see my answer to Question 29.d. To the extent this question asks for my opinion about the existence or non-existence of fraud, election irregularities, or other matters pertaining to the fairness or integrity of the election, I agree with Justice Ketanji Brown Jackson who, in her responses to this Committee’s questions for the record pertaining to the 2016 and 2020 elections, explained that under the Code of Conduct for United States Judges, it is inappropriate for judicial nominees to comment on election results.

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

Response: Because President Trump has twice been “elected to the office of the President,” the Twenty-Second Amendment prevents him from being elected again.

30. Has any official from the White House or the Department of Justice, or anyone else involved in your nomination or confirmation process, instructed or suggested that you not opine on whether any past Supreme Court decisions were correctly decided?

Response: Members of the White House Counsel’s Office and the Department of Justice have provided information about the way past nominees have answered similar questions, but I have answered all questions posed to me based on my own independent judgment.

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

Response: No.

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

Response: To the best of my knowledge, the only member of DOGE with whom I have spoken since November 2024 is James Burnham, who I have known for years. We have occasionally corresponded both socially and regarding work, and I have seen him in person on perhaps two or three occasions, including at the Federalist Society’s 2025 National Lawyers Convention.

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

Response: To the best of my recollection, I have spoken or corresponded with Stephen Miller one time since November 2024, when I saw him at an event in Washington, D.C. in December 2025. We briefly discussed his work.

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

Response: I briefly introduced myself to Chad Mizelle at an event in Washington, D.C. in 2025. We exchanged pleasantries. I believe I also exchanged pleasantries with Mr. Mizelle after he spoke at the Federalist Society National Lawyers Convention in 2025. To the best of my recollection, our only other communications since November 2024 involved occasional discussions with mutual acquaintances on matters of religious faith.

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

Response: No.

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

Response: No.

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

Response: No.

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

Response: To the best of my recollection, I have spoken or corresponded with Leonard Leo a handful of times since November 2024 about my law firm's work. I believe I met him once in person since November 2024, when we briefly said hello at an event in Washington, D.C., in 2025.

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

Response: To the best of my knowledge, no.

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

- a. Enrique 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: To the best of my knowledge, no.

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

Response: To the best of my knowledge, no.

42. 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.

43. 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.”⁴

- a. Do you agree with the above statement?

Response: As a judicial nominee, it would be inappropriate for me to comment on public statements made by other people, especially on matters of politics. *See* Code of Conduct for United States Judges, Canon 5.

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

Response: To the best of my knowledge, no one with whom I discussed my nomination is associated with the Article III Project. Anyone who spoke about my

⁴ <https://www.article3project.org/about>

nomination with someone associated with the Article III Project did so on their own initiative, and not on my behalf, at my request, or at my suggestion.

44. 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)?

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

Response: No, except to tell me that it was my choice which cases to list.

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

Response: No.

45. 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 a draft response to these questions after consulting my records, legal precedent, and responses addressing similar questions and issues submitted by other judicial nominees. After receiving limited feedback from people at the Office of Legal Policy at the U.S. Department of Justice, I finalized my answers based on my independent judgment and authorized the answers to be submitted to the Senate Judiciary Committee.

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

May 20, 2026

Questions for Benjamin Michael Flowers (Sixth Circuit Court of Appeals):

1. In December 2020 you filed an amicus brief in *Texas v. Pennsylvania*, which asked the Supreme Court to throw out election results in four states. In emails that are now publicly available, you said that the case was “a terrible idea,” that “will tarnish the credibility of any office that gets involved,” and that it was “really becoming a disgrace.”

- a. Can you explain the full context of your emails and why you viewed such cases or relief sought as “a disgrace?”

Response: To my knowledge, the email to which you refer is not publicly available. After the hearing, I conferred with the Ohio Attorney General’s Office. That office could not identify any public-records disclosure containing the email in question. I personally spent hours looking for the email on databases compiling documents produced pursuant to public-records request. I did not find it. Nor has the Committee provided the document or revealed the source of any public-records request through which it obtained this document. It is therefore possible the document was illegally or improperly leaked. Because I am unable to confirm that attorney-client privilege was waived as to this document, I must continue to honor the attorney-client privilege I owe to my former client by declining to discuss the email.

- b. If you honestly believed that such a consequential filing was disgraceful, why did you continue to support the broader litigation?

Response: Please see my answer to Question 1.a. I am unsure what you mean by “continu[ing] to support the broader litigation.” My office filed a brief at the Supreme Court advancing arguments on behalf of my client, the State of Ohio. Any discussions concerning the reason for filing a brief on behalf of a client are protected by attorney-client privilege.

2. Please explain why the Judicial Codes of Conduct prevent you from stating the winner of the 2020 election while permitting you to discuss the certification of electoral college votes.

Response: The Code of Ethics for United States Judges is “designed to provide guidance to judges *and nominees for judicial office*.” Commentary to Canon 1 (emphasis added). Canon 5 of the Code counsels against engaging in political activity. In responses to questions for the record that Justice Ketanji Brown Jackson filed after her 2022 confirmation hearing, Justice Jackson gave the following response when asked whether she had commented privately or publicly about the results of the 2016 and 2020 elections:

Consistent with the Code of Conduct for United States Judges and the positions taken by prior nominees, as a pending judicial nominee and a sitting federal judge, it would be inappropriate for me to publicly weigh in [on] any subject of political debate. In my individual capacity, I have had private conversations on a wide variety of topics.

See Ketanji Brown Jackson, Nominee to be Associate Justice of the Supreme Court of the United States at 136–37, <https://perma.cc/77Z7-H69H>.

I agree with Justice Jackson and believe it is best to avoid commenting on election results that are the subject of political controversy. I was able to address certification because, in so doing, I was able to explain the constitutional process without “publicly weigh[ing] in [on] any subject of political debate.”

3. Do you accept that the 2020 presidential election was a free and fair election?

Response: Please see my answer to Question 2.

4. How do you define who “won” a presidential election?

Response: The Twelfth Amendment dictates the constitutional process for determining the President.

5. In January, you filed an amicus brief in the United States Supreme Court arguing that the Fourteenth Amendment's Citizenship Clause, which guarantees citizenship to all persons born in the United States, should not extend to the children of undocumented immigrants. You called the conventional reading of the 14th amendment “wrong” and in a speech to the Toledo Bar Association last fall, stated that “the children of people here illegally don't count.” My parents immigrated from Mexico. They were not lawfully present in the United States when I was born in California.

- a. Under your interpretation of the 14th Amendment, should I be a US citizen under the Constitution? Have I been a US citizen from the moment I was born under the Constitution?

Response: Respectfully, you mischaracterize my speech, which specifically takes no position on the merits of the birthright-citizenship case. Further, I did not say—and I would *never* say—that the children of undocumented immigrants do not “count” in a moral sense. The quote you provided strips from context my quick explanation of the arguments made by one side of the dispute over the meaning of the Fourteenth Amendment’s Citizenship Clause, under which the children of illegal immigrants do not qualify as people born “subject to the jurisdiction” of the United States. Here is the full passage:

Consider the debate about birthright citizenship. The Fourteenth Amendment bestows citizenship on “All persons born or naturalized in the United States, and subject to the jurisdiction thereof.” That provision reverses the ruling

of *Dred Scott*. What does it mean to be “subject to the jurisdiction” thereof? Some courts have said it means “subject to the laws,” excluding ambassadors and the like. At least arguably, the Supreme Court has endorsed this understanding. And under this understanding, American-born children of illegal immigrants are citizens. But there is ample scholarship arguing that “subject to the jurisdiction thereof” is in fact a term of art meaning something like “born owing allegiance to this country alone.” On this understanding, the children of people here illegally don’t count. And, the argument goes, this is consistent with past decisions denying birthright citizenship to Indians—individuals born in America but who owed allegiance to their tribes.

Any further answer would require me to comment on matters that are subject to pending litigation in the Supreme Court. *See* U.S. Code of Ethics, Canon 3(a)(6). As such, it would not be appropriate for me to comment.

- b. Do you stand by what you wrote: that I should not count as an American citizen under the US Constitution? Please explain your comments.

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

- 6. The following are yes or no questions related to the 2020 election:

- a. According to Wisconsin’s certified 2020 General Election results, did Joe Biden receive more than 19,000 votes more than Donald Trump?

Response: Please see my answer to Question 2. Further, I am unaware of what the certified vote counts were in any State in the 2020 election.

- b. According to Pennsylvania’s certified 2020 General Election results, did Joe Biden receive more than 80,000 votes more than Donald Trump?

Response: Please see my answer to Question 6.a.

- c. According to Georgia’s certified 2020 General Election results, did Joe Biden receive more than 11,000 votes more than Donald Trump?

Response: Please see my answer to Question 6.a.

- d. According to Arizona’s certified 2020 General Election results, did Joe Biden receive more than 40,000 votes more than Donald Trump?

Response: Please see my answer to Question 6.a.

- e. According to Nevada’s certified 2020 General Election results, did Joe Biden receive more than 20,000 votes more than Donald Trump?

Response: Please see my answer to Question 6.a.

- f. According to Michigan’s certified 2020 General Election results, did Joe Biden receive more than 154,000 votes more than Donald Trump?

Response: Please see my answer to Question 6.a.

- g. Based on your answers to questions 6(a) through 6(f), did Joe Biden win more votes than Donald Trump in each of those six states?

Response: Please see my answer to Question 6.a.

7. Do you have any reason to believe that the outcome of any state’s presidential vote was impacted by irregularities or fraud? If so, please explain.

Response: Please see my answer to Question 2.

8. On January 7, 2021, a joint session of Congress certified 306 electoral votes for Joseph Biden and 232 electoral votes for Donald Trump. Joe Biden received more votes than Donald Trump across 25 states, DC, and NE-02 in the 2020 election.

- a. Do you have any reason to believe that Congress was wrong to certify each state’s electoral votes?

Response: Please see my answer to Question 2.

9. You called Justice Gorsuch’s decision in *Bostock v. Clayton County* “bad textualism.” Please explain what you found objectionable about the opinion.

Response: I agree with now-Judge Rachel Bloomekatz, who in her responses to questions for the record explained: “As a judicial nominee, it is generally inappropriate for me to comment on the merits of the Supreme Court’s binding precedents.” See Written Questions for Rachel Bloomekatz, Nominee to be United States Circuit Judge for the Sixth Circuit at 7 (June 29, 2022), <https://perma.cc/7THV-6H7X>. *Bostock* is not among the traditionally recognized exceptions to the rule that nominees should refrain from commenting on binding precedent. Because I am a judicial nominee, I will refrain from further addressing the merits of binding precedent.

10. Last October, you gave a speech to the Toledo Bar Association in which you asserted that while the President must abide by individual court orders, he would be free to disregard the legal reasoning in any judicial opinion he disagrees with.

- a. If you find that characterization inaccurate, please explain under what circumstances an executive branch official, or the executive branch itself, may disregard a court order.

Response: The speech in question addressed the theory of departmentalism, under which all three branches have an independent duty to interpret the Constitution. In the speech, I explained that only judgments are formally binding. This does not mean, however, that judicial precedents are irrelevant to the other branches in the absence of a binding judgment. Opinions of federal appellate courts and the Supreme Court are of immense relevance to the legislative and executive branches because the holdings of those cases create precedent to which lower courts must adhere in challenges to executive or legislative policies. That imposes limits on other government actors irrespective of whether they are bound by the judgment at issue. For one thing, if the President or other government officials act in a manner contrary to a Supreme Court opinion, lower courts would be bound to say so and award appropriate relief in a challenge to the action in question. Thus, precedent of the U.S. Supreme Court is immensely significant to the executive and legislative branches regardless of whether they are formally bound by a judgment.

If I were confirmed to serve as a lower-court judge, I would be bound by and required to adhere to binding precedent.

- b. You told Senator Kennedy that orders given by courts lacking jurisdiction may be ignored. Under such circumstances, which government officials may make determinations about whether an Article III court properly established jurisdiction over a case?

Response: Litigants must generally follow court orders issued in a proceeding to which they are a party. The normal recourse for any litigant who disagrees with a judicial order is to seek reconsideration, to appeal, to seek a stay, or to pursue some combination of these options. The same is true for litigants who are Executive Branch officials. Courts have held that parties may refuse to follow court orders only in exceptionally narrow circumstances. For example, parties may defy an order as a means of securing the appeal of an otherwise-unappealable interlocutory order. The Supreme Court recognized this exception in *Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100 (2009), which acknowledged that one “long-recognized option” for appealing interlocutory disclosure orders is to intentionally defy the order, “incur court-imposed sanctions,” and then appeal from the sanctions award. *Id.* at 111. Further, “[i]f a court order issues without personal or subject matter jurisdiction, the decree may be violated without incurring the penalty of criminal contempt.” *In re Establishment Inspection of Hern Iron Works, Inc.*, 881 F.2d 722, 726 (9th Cir. 1989); accord *Ex parte Fisk*, 113 U.S. 713, 714 (1885) (“When, however, a court of the United States undertakes, by its process of contempt, to punish a man for refusing to comply with an order which that court had no authority to make, the order itself, being without jurisdiction, is void, and the order punishing for the contempt is equally void.”). The Supreme Court has also suggested that parties may not be bound to comply with an order where it is “factually impossible” to do so. *United States v. Rylander*, 460 U.S. 752, 757 (1983).

11. Under the legal theory you espoused in your speech to the Toledo Bar Association, is the executive branch bound by the **reasoning** of the *Brown v. Board of Education* decision and the lower court precedents which stemmed from that case's reasoning, or only narrowly bound by the specific orders entered in the case as applied to named parties?

Response: Please see my answer to Question 10.a. If I were confirmed, I would be required to, and would, faithfully apply *Brown v. Board of Education* and all other binding precedents. There is no situation in which a lower court may refuse to apply binding Supreme Court precedent.

- a. Under that same theory of departmentalism, if the executive branch honors the specific orders of a case -- assuming that the executive also finds proper jurisdictional authority -- may the executive branch disregard the reasoning of:

i. *Loving v. Virginia*?

Response: Please see my answer to Question 11.

ii. *Griswold v. Connecticut*?

Response: Please see my answer to Question 11.

iii. *Bostock v. Clayton County*?

Response: Please see my answer to Question 11.

iv. *Obergefell v. Hodges*?

Response: Please see my answer to Question 11.

12. In 1803, Chief Justice Marshall wrote that "it is emphatically the province and duty of the judicial department to say what the law is." In 2025, you told the Toledo Bar Association that it is a "mistaken yet widespread view that the law is what courts say it is."

- a. Do you believe that *Marbury v. Madison* was correctly decided?

Response: *Marbury v. Madison* is among the cases whose correctness past nominees have recognized. Therefore, I can affirm that *Marbury* was correctly decided.

- b. If confirmed, you will draft judicial opinions explaining your legal reasoning and telling parties what the law requires of them. I imagine you will expect all parties appearing before you comply. Should they?

Response: If I were confirmed, I would issue opinions explaining my legal reasoning. The holdings of majority opinions would bind future Sixth Circuit panels and lower courts. It would not be appropriate for me, as a judicial nominee, to

prejudge the consequences of a hypothetical non-party's acting in non-compliance with the reasoning of a hypothetical opinion.

- c. If you issue a declaratory judgment, merely defining the rights, obligations, or legal status of parties in a dispute, is it your view that the executive branch can ignore that ruling according to the President's views? Please explain when a party may disregard any of your decisions as dicta,

Response: Please see my answer to Question 11. Regarding your question about dicta, dicta has been defined by one leading treatise as "remarks made in the course of a decision but not essential to the reasoning behind that decision." Bryan A. Garner, *et al.*, *The Law of Judicial Precedent* §4, p.44 (2016).

13. More than 60 federal and state courts, including courts presided over by judges appointed by Republican presidents, dismissed legal challenges to the 2020 presidential election results for lack of evidence, lack of standing, or lack of merit.

- a. Do you have any reason to believe that any of those courts reached the wrong conclusion?

Response: As a judicial nominee, it would not be appropriate for me to grade past work by courts or to weigh in on matters of political controversy. *See* Code of Conduct for United States Judges, Canons 3(A)(6) and 5.

- b. Do you believe those judges -- many of whom were appointed by Republican presidents, including President Trump -- acted improperly or in bad faith in dismissing those challenges?

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

14. Have you ever, publicly or in an official capacity, questioned or disparaged: (i) the legitimacy of the 2020 presidential election results; (ii) Congress's January 6, 2021 certification of those results; or (iii) any federal or state court ruling rejecting legal challenges to those results? If so, please explain.

Response: Please see my answer to Question 2.

15. Do you believe in a constitutional right to privacy? If so, please explain the constitutional basis for that right.

Response: The Supreme Court has recognized a fundamental right to privacy in certain contexts. *See, e.g., Griswold v. Connecticut*, 381 U.S. 479, 485–86 (1965). Other provisions, including the Fourth Amendment's protections against unreasonable searches and seizures, also protect privacy.

- a. Do you believe that *Griswold v. Connecticut* was correctly decided?

Response: The Supreme Court has interpreted the Due Process Clause as guaranteeing a right to use contraceptives. *See Griswold v. Connecticut*, 381 U.S. 479, 485–86 (1965). I would faithfully apply this and all other Supreme Court precedents. As a judicial nominee, it would not be appropriate for me to comment on the correctness of this decision, as explained in my answer to Question 9.

16. At a recent speaking event at Catholic University, Justice Kavanaugh stated that he considers himself “in many ways, a Bork, Scalia, Rehnquist guy” when discussing his judicial role models. What judges or justices would you consider foundational to your judicial philosophy, and why?

Response: My two former bosses—Justice Scalia and Ninth Circuit Judge Sandra Ikuta—were foundational to my view on the proper role of judging. Through Justice Scalia’s opinions, I learned (as did so many Americans) how a text-focused jurisprudence can produce principled decisions and help courts serve their constitutionally defined role. From Judge Ikuta, I learned the critical importance to the judicial system of circuit courts’ adherence to precedent. She also instilled in me a belief that judges owe the parties in cases before them an obligation to work hard to correctly resolve every case. As I have written publicly:

I needn’t speculate about why Judge Ikuta worked so hard; she told me. In every case, she explained, there are parties deeply invested in the outcome. For those parties, their case is among the most important issues before the United States government. Each case may be the only, or even final, interaction the parties have with the courts or with American law. And those parties, Judge Ikuta explained, deserve to have their cases taken seriously and decided correctly. They deserve to *know* that their cases were taken seriously even, and perhaps especially, when they *think* the cases were decided wrongly. (For the same reason, Judge Ikuta would not use humor in her opinions.)

See Ben Flowers, *Judge Sandra Ikuta’s Legacy of Service*, National Review (Nov. 10, 2025), <https://www.nationalreview.com/bench-memos/judge-sandra-ikutas-legacy-of-service/>.

17. If confirmed, cases involving reproductive rights -- including access to abortion, contraception, and assisted reproductive technology -- may come before you. Do you believe that individuals have any constitutionally protected right to make reproductive healthcare decisions? Please explain.

Response: The Supreme Court has interpreted the Due Process Clause as guaranteeing a right to use contraceptives. *See Griswold v. Connecticut*, 381 U.S. 479, 485–86 (1965). It has held that the Constitution does not guarantee a right to abortion. *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022). Other decisions and doctrines may be implicated in cases about reproductive rights. If I am confirmed, I will faithfully apply the law to the facts of each such case that comes before me.

18. Judicial clerkships serve several important professional roles. They are a meaningful opportunity for recent law graduates to learn from an experienced mentor, and they serve as an important -- and often necessary -- step toward the highest levels of our legal profession. Too often, students from diverse backgrounds are overlooked for these opportunities despite equivalent qualifications.

- a. Do you believe that diversity at all levels of the federal judiciary is important? Please explain your view.

Response: No one should face prejudice in seeking to serve in the judiciary based on race, sex, ethnicity, or other characteristics unrelated to their ability to impartially apply the law in the cases on which they work.

- b. If confirmed, how will you personally ensure diversity among your law clerk classes?

Response: I believe firmly in the answer I provided to Question 18.a, and will conduct myself accordingly.

19. I want to give you an opportunity to discuss your views on the 22nd Amendment.

- a. What does the 22nd Amendment state?

Response: The Twenty-Second Amendment states:

Section 1. No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once. But this Article shall not apply to any person holding the office of President when this Article was proposed by the Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this Article becomes operative from holding the office of President or acting as President during the remainder of such term.

Section 2. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.

- b. Under the text of that amendment, is there any basis on which an individual who has already been elected President twice could lawfully be elected to a third term?

Response: No.

- c. Donald Trump was elected President in 2016 and again in 2024. How many times has Donald Trump been elected President?

Response: Donald Trump has twice been elected President.

- d. Are you aware of any provision of the Constitution, federal statute, or judicial precedent that would permit Donald Trump to be elected to a third term?

Response: No.

- e. If a case came before you challenging the eligibility of any individual to appear on a presidential ballot in violation of the 22nd Amendment and you concluded a candidate was ineligible to run for under that amendment, would you have any hesitation in ruling against them regardless of that individual's political standing or the political consequences of your decision?

Response: I will resolve all cases that come before me based on the law and without regard to a party's political standing or the political consequences of my decision.

20. If confirmed, cases involving discrimination claims brought by LGBTQ+ individuals under Title VII or other federal civil rights statutes may come before you. Will you commit to treating these individuals with dignity by ensuring that your courtroom is a forum where all LGBTQ+ litigants, witnesses, and counsel are addressed respectfully -- including by use of their correct name and gender identity -- and where their claims receive the same full and fair consideration afforded to all parties?

Response: It is vitally important to me that all litigants appearing before me be treated with respect, and that all parties' claims receive the same full and fair consideration. The reasons why are laid out in the excerpt from my article about Judge Ikuta, which I included in my response to Question 16. How best to refer to a litigant, witness, or attorney may depend on an unknown number of circumstances, and it would not be appropriate for me as a judicial nominee to commit in advance to a one-size-fits-all approach, except to say that I will take care to treat everyone with the same degree of respect.

21. Do you believe that individuals in immigration removal proceedings, including those who entered the United States without authorization, are entitled to the due process protections guaranteed under the US Constitution? Please explain.

Response: The Due Process Clause in the Fifth Amendment applies to all "person[s]." The Supreme Court has held 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). I would faithfully apply this and other Supreme Court precedents if confirmed.

22. If confirmed, will you commit to ensuring that every person who appears before you is treated with dignity and afforded the full protection of the Constitution and federal law regardless of their immigration status, national origin, or language?

Response: Yes.

23. What recourse do you believe is available to a federal judge whose orders are not followed.

Response: Courts have a variety of tools at their disposal for enforcing orders. For example, the Sixth Circuit has held that it may reassign cases to a new district-court judge where the original judge refused to follow a Sixth Circuit order. *See United States v. Schrank*, 975 F.3d 534, 537 (6th Cir. 2020). Other examples of tools for enforcing judicial orders include the imposition of sanctions and the initiation of contempt proceedings.

Senator Peter Welch
Senate Judiciary Committee
Written Questions for Benjamin Flowers
Hearing on “Nominations”
May 20, 2026

1. In your October 24, 2025, speech to the Toledo Bar Association entitled “Departmentalism in the Age of Trump,” you said President Trump “correctly asked” the Supreme Court to overrule *Humphrey’s Executor v. United States* (1935).

- a. Why do you believe that *Humphrey’s Executor* was wrongly decided?

Response: I gave that speech and wrote the accompanying blog post when I was a private attorney, before being nominated to the bench. As a judicial nominee, it would be inappropriate for me to comment on matters that are subject to pending litigation. See Code of Conduct for United States Judges, Canon 3(A)(6).

- b. You said that President Trump has “set up a case that will allow the Supreme Court to correct its mistaken interpretation in a decision that will bind the rest of the judicial department.” Have you ever advised a client to set up a case to “correct” Supreme Court precedent? If so, please name which case(s).

Response: Any advice I have provided to clients would be protected by attorney-client privilege, so I must respectfully decline to answer.

2. In June 2025, you posted “Some thoughts on the future of textualism” to your Substack “Letters from a Syrup Farmer in Ohio.”

- a. You said that “Those of us who support textualism must therefore insist on its aggressive application; bluntly put, the political support needed to appoint textualist judges will wither unless textualist judges aggressively exercise what discretion they have.” What did you mean by this statement?

Response: In that blog post, which I wrote as a private attorney and before I was nominated to be a federal judge, I was addressing the following observation: “... many in the conservative legal movement are prepared to declare it a failure. More precisely, more and more (mostly younger) right-leaning lawyers talk as though they want to jettison ‘textualism’” In the post, I defended textualism against objections raised by the lawyers in question, arguing that their real frustration is not with textualism but with concerns about the exercise of discretion (including discretion involving which cases to take and how broadly or narrowly to write opinions). I was focused on discretion at the Supreme Court. If

confirmed to serve as a circuit judge, I would have significantly less discretion than does a Justice of the Supreme Court (as that court can decide which cases to take and more easily overrule its own precedent), and would be bound by, and would faithfully apply, Sixth Circuit and Supreme Court precedent.

- b. You also said *Bostock v. Clayton County* (2020), a Supreme Court decision holding that Title VII of the Civil Rights Act prohibited employment discrimination against LGBT+ individuals, “was wrongly decided from a textualist standpoint.” Do you still hold this view?

Response: I wrote that blog post when I was a private attorney and before I was nominated to be a federal judge. As a judicial nominee, it would be inappropriate for me to comment on the correctness of binding Supreme Court precedents. If confirmed, I would abide by all such precedents, including *Bostock*.

3. During your nominations hearing, you testified in response to questions from Senator Kennedy that a court’s “interpretation of the law will be binding on the parties in the case before it, but it’s not necessarily binding on future parties, so the Executive would be free to try the same thing again with other parties.” You made a similar comment to me.

- a. Why do you believe a President may violate binding Supreme Court precedent when other parties are involved?

Response: A judgment formally binds the party to the case. But opinions issued alongside that judgment are nonetheless vitally important to other parties, including the President. Most critically, the holdings of written opinions by the Supreme Court bind lower courts. That imposes limits on other government actors irrespective of whether they are bound by the judgment at issue. Most critically, if the President or other government officials act in a manner contrary to a Supreme Court opinion, lower courts would be bound to say so and award appropriate relief in a challenge to the action in question. For this and other reasons, precedent of the U.S. Supreme Court is immensely significant to the executive and legislative branches regardless of whether they are formally bound by a judgment.

4. You are a partner at Ashbrook Byrne Kresge Flowers LLC. In June 2025, you told the Wall Street Journal that “[w]e did the politically charged work . . . that bigger law firms wouldn’t touch” and “[w]e are now in a position where we can grow up with the conservative legal movement.” Please explain what you meant by this statement.

Response: The “conservative legal movement” is a capacious phrase for those interested in advancing principles implicated by the sort of work about which I was speaking. I meant that, as interest in such work expanded, our law firm would grow too. In this capacity, I was speaking as a private attorney about my own work representing clients.

There is a substantial difference between the role of a practicing attorney and the role of a judge. All judges who previously litigated cases have taken positions on behalf of clients. Upon taking the bench, they take on a new role: fairly adjudicating cases according to the law, including binding precedent, without regard to any positions they might have advanced and without regard to policy or political preference. If confirmed, I will discharge my duties in the manner just described.

5. On December 20, 2023, you wrote in your Substack newsletter “Letters from a Syrup Farmer in Ohio” that “the events at the Capitol on January 6 do not qualify as an insurrection.” Please explain what you meant by this statement.

Response: I categorically condemn the violent actions that occurred at the Capitol on January 6, 2021. More broadly, I categorically condemn political violence and violence against law-enforcement officers. The post to which you refer, made in my capacity as a private attorney and before I was nominated to be a federal judge, addressed the purely legal question whether the events in question qualified as an “insurrection or rebellion” under Section 3 of the Fourteenth Amendment and relied on arguments advanced by Professor (and former Tenth Circuit judge) Michael McConnell. As a judicial nominee, it would be inappropriate for me to comment further, as the characterization of the events of January 6, 2021, is a matter of political controversy and is also subject to pending litigation. *See Code of Conduct for United States Judges, Canons 3(A)(6), 5.*

6. In the amicus brief you filed on behalf of the Pacific Research Institute in *Janssen Pharmaceuticals, Inc. v. Kennedy*, you argued that “[t]he Inflation Reduction Act empowers the government to extort the transfer of patented pharmaceuticals.” During your nominations hearing, after I asked you to explain what you meant by this statement, you said that the case was a matter of “pending litigation” and “was still pending at the Supreme Court.” The petition for certiorari was denied by the Supreme Court on May 18 and your hearing occurred on May 19. Please explain what you meant by this statement.

Response: I erred, and I apologize for that error. My hearing was on May 20. The Supreme Court denied the petition for a writ of certiorari on May 18. While the time for filing a petition for rehearing had not yet expired, *see Sup. Ct. R. 44.2*, meaning the Court could theoretically still issue a writ of certiorari were rehearing sought, that is not what I had in mind when I responded.

Questions for the Record
Sen. Adam Schiff (CA)

Benjamin M. Flowers, Nominee to the United States Court of Appeals for the Sixth Circuit

1. How would you define public corruption as a matter of federal law?

Response: Federal law may define “corruption” differently in different contexts, including with respect to honest-services fraud and bribery cases. If I were privileged to be confirmed, I would consult the definition set forth by the relevant statute or precedent.

- a. If an employee of the office of the Ohio Solicitor General used their position to give money to their friends, would you consider that public corruption?

Response: This question solicits my personal views. As a judicial nominee, it is not appropriate for me to comment. *See* Code of Conduct for United States Judges, Canon 5. Ranking Member Durbin ably explained why in opening statements delivered before the confirmation hearing for now-Judge Julie Rikelman:

Members often ask nominees about what they personally believe... It puts a judicial nominee on the spot. The Judicial Conference of the United States has directed both sitting judges and judicial nominees not to share their personal opinions. The rationale is obvious. Offering personal opinions suggests a nominee has prejudged an issue. It suggests to future litigants that the nominee will arrive with preconceptions and will disregard their obligation to simply apply the law to the facts.

See Ranking Member Sen. Dick Durbin, Durbin Delivers Opening Statement During Latest Nominations Hearing (Sept. 21, 2022), <https://perma.cc/6FU7-V8PS> (brackets omitted).

I share this view of the Code of Conduct and thus will respectfully decline to answer questions that inquire as to what I personally believe. If a case were to come before me presenting this or any similar scenario, I would faithfully apply the law, including any binding precedent.

2. Have you represented any clients in private practice or public service that argued they were the subject of “weaponization” or “lawfare” by the federal government? If so, please list the client name, time frame of your representation, forum where they made this argument, and a summary of their claim of “weaponization” or “lawfare.”

Response: I, and firms with which I have been associated, have represented clients with disputes against the federal government. It would not be appropriate for me to apply your characterizations to their claims, including because doing so with respect to any one

client may prejudice other current or former clients. The question also seeks information that may be protected by privilege, the work-product doctrine, and confidentiality requirements. Accordingly, I must respectfully decline to answer, except to say that any public filings speak for themselves.

3. In a December 2023 blog post, you argued the events at the U.S. Capitol on January 6, 2021 “do not qualify as an ‘insurrection or rebellion’” in the meaning of the Fourteenth Amendment. In your amicus brief for Ohio related to *Trump v. Anderson*, you argued that, even where insurrections occur, Presidents cannot be removed from office for inciting them.

- a. Was there violence on January 6, 2021 at the U.S. Capitol?

Response: Yes. I categorically condemn violence against police officers and political violence. Nothing in that post to which you refer should be misunderstood to imply otherwise. In that blog post, I was addressing the purely legal question whether the events in question qualified as an “insurrection or rebellion” as those phrases appear in Section 3 of the Fourteenth Amendment. And I did so in my capacity as a private attorney, not a judicial nominee, relying on arguments advanced by Professor (and former Tenth Circuit judge) Michael McConnell. Now that I am a judicial nominee, I must take care not to forecast how I would resolve issues that might come before me. The Code of Conduct also counsels against commenting on matters that are the subject of pending litigation. *See* Code of Conduct for United States Judges, Section 3(A)(6). Whether to characterize the events of that day as an “insurrection” is implicated by pending litigation, *see, e.g., Smith v. Trump*, No. 25-cv-03602, 2026 WL 1034931 (D.D.C. Apr. 16, 2026), appeal pending No. 26-5164 (D.C. Cir.), and by potential future litigation that could come before me were I to be confirmed. As such, it would not be appropriate for me to affirm or disavow my previous position. If the issue comes before me, I will fairly consider the parties’ arguments and apply the law to the facts of the case—all judges have a duty to decide cases impartially without regard to arguments they advanced in briefs or academic work, and I will adhere to that duty if I am confirmed.

I note that at least two factual premises in Question 3 are inaccurate. First, I did not file a brief for Ohio in *Trump v. Anderson*. Instead, I filed a brief as a private-sector lawyer on behalf of Professor James T. Lindgren. Second, the brief addressed the meaning of Section 3 of the Fourteenth Amendment in a case involving the provision’s application to a Presidential candidate; it did not address when or whether “Presidents can[] be removed from office.”

- b. Would you consider any of that violence to be political violence?

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

- c. What violence are you aware of that occurred on January 6, 2021 at the U.S. Capitol? Please list any events that you recall reading about, watching, or seeing in subsequent media reports.

Response: I cannot recount particular examples, but I have seen footage of the events of that day.

- d. Per your December 2023 blog post, what level of political violence beyond the horrific January 6th attacks on our Capitol and law enforcement officers would constitute an insurrection in your view?

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

- 4. You were counsel of record for Ohio on an amicus brief supporting Trump’s position that Pennsylvania Supreme Court should not count ballots received after election day in 2020, presumably because then-President Trump thought that absentee ballots would favor his opponent. Would you agree that your support for President Trump’s position in that case contributed to your nomination for this lifetime appointment?

Response: I have no reason to believe my work on that brief, which I filed on behalf of a client in 2020, contributed to my being nominated.

- 5. Do you agree that Article III courts are courts of limited subject matter jurisdiction?

Response: Yes.

- a. What is your understanding of the Article III cases and controversies requirement?

Response: Article III empowers federal courts to hear “Cases” and “Controversies.” This has been interpreted to mean that courts may hear only disputes in which the plaintiff has “Article III standing.” To have standing, the Supreme Court has held that a plaintiff “must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016).

- b. Do you agree that federal courts are limited to cases and controversies where the parties have adverse legal interests?

Response: In light of the following question, I cannot answer this question because it seeks comment on matters that are the subject of pending litigation. *See* Code of Conduct for United States Judges, Canon 3(a)(6).

- c. Would a lawsuit where the plaintiff and defendant are the same individual be frivolous?

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

- d. How does the legal profession typically respond to frivolous lawsuits?

Response: Courts and parties have a variety of tools they may use to respond to frivolous litigation. Rule of 11 of the Federal Rules of Civil Procedure empowers courts to sanction parties engaged in frivolous litigation.

6. In an amicus brief you wrote regarding *Brandt v. Pompa* while Solicitor General of Ohio, you argued there is a legitimate government interest in capping the damages available to rape victims. Part of your argument appeared to be that juries might award damages larger than necessary to compensate rape victims.
- a. What was the legal standard for deference in that case?

Response: I wish to stress that the brief to which you refer specifically criticized the law on policy grounds and expressly urged the legislature to change the law; any suggestion that our brief sought to diminish the horror of sexual assault mischaracterizes the brief's contents. To illustrate the point, I am copying the introduction of the brief for your review.

It has been suggested that every judge be “given a stamp that read[s] ‘stupid but constitutional.’” *Brown v. Chicago Bd. of Educ.*, 824 F.3d 713, 714 (7th Cir. 2016) (citation omitted). This tragic case “provides another illustration of” the need for such a tool. *Id.*

The psychological trauma of sexual assault can exceed, even overshadow, the physical trauma. So it is surprising—some might even say callous—that Ohio law caps non-economic damages for severe psychic injury, but not for severe physical injury. After all, “psychological injuries can be as real as physical injuries.” *McCrone v. Bank One Corp.*, 107 Ohio St. 3d 272, 2005-Ohio-6505 ¶39 (Lundberg Stratton, J., concurring). “Emotional injury can be as severe and debilitating as physical harm”; it is equally “deserving of redress.” *Schultz v. Barberton Glass Co.*, 4 Ohio St. 3d 131, 135 (1983). So the damages cap, in its application to the psychological damages of rape victims, is incredibly foolish.

But—and that conjunction is the point of this brief—that foolish policy is nonetheless constitutional. “[T]he people of Ohio conferred the authority to legislate” on the General Assembly. *State v. South*, 144 Ohio St. 3d 295, 2015-Ohio-3930 ¶28 (O’Connor, C.J., concurring). The legislature, therefore, is the branch that must make the hard choices about how to shape “Ohio’s tort law to meet the needs of our citizens.” *Groch v. Gen. Motors Corp.*, 117 Ohio St. 3d 192, 2008-Ohio-546 ¶102; *New Riegel Local Sch. Dist. Bd. of Educ. v. Buehrer Grp. Architecture & Eng’g, Inc.*, 157 Ohio

St. 3d 164, 2019-Ohio-2851 ¶54 (Stewart, J., dissenting). That remains the case even when judges believe legislation “fails to embody the highest wisdom or provide the best conceivable remedies,” because the “wisdom and the policy of” legislation is “not for [courts] to judge.” *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 550–51 (1949). A court might “urge ... legislators” to treat physical and mental injuries identically. *McCrone*, 107 Ohio St. 3d 272 ¶42 (Lundberg Stratton, J., concurring). And the Attorney General, for his part, urges the legislature to lift the damages cap in civil cases brought against rapists. But the Constitution permits neither the judiciary nor the executive to change the law—that duty falls to the legislature.

To be sure, the legislature must exercise its policymaking power in a manner consistent with the Constitution. But here, it has. For one thing, the damages cap rationally relates to a legitimate government purpose (as all laws must): even in its application to tragic cases like this one, it protects against the risk that a jury presented with a suffering victim will award more than is necessary to fully compensate that victim. Beyond that, the law does not run afoul of any other constitutional provisions. The law accords with the remedy language in Article I, Section 16 because it does not reduce a jury award to zero. The law does not invade the jury right, because it merely assigns the legal consequences to a jury’s factual conclusions rather than replace those conclusions with those of another decisionmaker. Finally, the law satisfies equal-protection principles because it is rational to distinguish physical from non-physical harm.

As this passage suggests, the brief that I filed on behalf of my client focused on whether the law was constitutional, not questions pertaining to the justifications for the award. The Supreme Court of Ohio “review[s] constitutional challenges to state and local legislation de novo, with the understanding that duly enacted laws are afforded a strong presumption of constitutionality.” *Put-in-Bay v. Mathys*, 163 Ohio St. 3d 1, 5 (2020) (internal citation omitted).

- b. What deference do you think an appellate judge should typically give to a jury or judge acting as a fact finder?

Response: The Sixth Circuit has held that factual determinations are typically reviewed for clear error. *Acosta v. Cathedral Buffet, Inc.*, 887 F.3d 761, 764 (6th Cir. 2018).

- c. When can an appellate judge substitute their own conclusions for those of a district court judge who engaged in fact finding or a jury who reached a conclusion based on a trial?

Response: Please see my answer to Questions 6.a and 6.b.

- d. Based on your research preparing that brief, what damages would be “more than [are] necessary to fully compensate” a survivor of rape?

Response: The brief to which you refer did not argue that the victim had been awarded more than was necessary for full compensation. Please see my answer to Question 6.a.

7. In a June 2025 blog post, you stated “Timid textualism will not, to borrow a phrase, Make America Great Again. Only judges committed to applying textualism aggressively are up to the task.” You also called on individuals outside the Judiciary to advocate for “aggressive textualism.” Please explain what you mean when you say aggressive textualism?

Response: The blog in question focused on the Supreme Court’s discretionary power and referred to discretionary choices including how broadly or narrowly to decide a case, when to grant certiorari, and whether to decide issues presented in an emergency posture. If I am confirmed to serve as a circuit judge, I would have significantly less discretion than that afforded to Supreme Court Justices. I would faithfully apply the law and binding precedents to the cases that come before me.

- a. Your remarks explicitly referenced a political slogan – MAGA. Do you think a judge’s use of a political slogan could potentially suggest a lack of impartiality?

Response: The Code of Conduct for United States Judges require judges to maintain the appearance of impartiality, *see* Canon 2, to refrain from conduct that may be inconsistent with the judicial role, *see* Canon 4, and to refrain from political activity, *see* Canon 5. Were I to be confirmed, I would adhere to these requirements, which I would understand to prohibit the endorsement of political slogans.

- b. What does it mean to be a MAGA federal judge?

Response: To my knowledge, I have not used this term.

- c. If confirmed, do you intend to be a MAGA judge?

Response: No.

8. During your nomination hearing, you repeatedly characterized your June 2025 blog post as a discussion of the opinions of others, not your own opinion. However, in the post, you write, “The solution, then, is not to abandon textualism, but to insist on its aggressive application. This requires those of us outside the judiciary to insist on aggressive textualism. We must condemn timid textualism when we see it, and we must demand the appointment of textualists who will apply their principles aggressively. But the already-appointed textualist judges must do their part, too: the modern conservative movement is

not going to insist on textualist judges if today's textualists apply their principles timidly.”

- a. If you did not intend to convey your own views in this writing, why did you use the phrase “we must” when referring to the application of “aggressive textualism?”

Response: Portions of the blog expressed my own views at the time, including about the merits of textualism. The passages about which I was asked, however, referred to the views I have heard espoused by others, in particular by younger attorneys and law students.

- b. What specific language in that blog post conveys that you were merely relaying the opinion of others?

Response: At my hearing, I recall being asked about two passages in the post to which you refer. Senator Klobuchar asked about the following passage: “That is unacceptable for the conservative movement of today, which seeks to reverse, not just arrest, our national decline; a movement that wants to kneecap the administrative state will not be satisfied with a Court content merely to erect some hurdles.” Senator Hirono asked about the following passage: “timid textualism is not useful for those who wish to reverse, not just stop, the degradation of America’s constitutional order and traditional Western values.” Senator Klobuchar asked me in particular about the passage concerning “kneecap[ing] the administrative state,” and Senator Hirono asked me about “the degradation of ... Western values.”

Consistent with my testimony, I have heard younger attorneys and law students express a desire to see the administrative state’s powers curtailed and traditional Western values restored; those same attorneys sometimes express a belief that textualism is inconsistent with these policy goals. (As the second paragraph of the blog makes clear: “... more and more (mostly younger) right-leaning lawyers talk as though they want to jettison ‘textualism, ...’”). The blog argues that “those” who hold these views and, in general terms, “the conservative movement of today,” ought not reject textualism. It was to “those” people and the “movement” generally that I ascribed these views; I did not address my own views on these policy matters, and it would not be appropriate for me to do so now as a judicial nominee. *See* Code of Conduct for United States Judges, Canon 5.

9. During your nomination hearing, you endorsed a “departmentalist” legal philosophy. In October 2025, you gave a speech to the Toledo Bar Association, in which you implied the district court’s decision in *FTC v. Slaughter* did not prohibit the Administration from illegally firing FTC Commissioner Rebecca Slaughter. You apparently argued the Executive is free to apply its own constitutional interpretation, even when federal judges declare that interpretation unlawful. You have also been critical of district courts’ use of injunctions to block illegal actions by the Trump Administration.

- a. Do you believe federal courts other than the Supreme Court can bind the Trump Administration?

Response: Yes.

- b. What should judges do when the Executive Branch ignores court orders?

Response: Courts have a variety of tools at their disposal for punishing non-compliance with judicial orders, including the imposition of sanctions and the initiation of contempt proceedings. If confirmed, I would faithfully apply binding law and precedent in cases presenting such situations.