Senator Dick Durbin
Ranking Member, Senate Judiciary Committee
Written Questions for Lee Philip Rudofsky
Nominee to be U.S. Circuit Judge for the Eighth Circuit
October 7, 2026

1. In *Arkansas State Conference NAACP v. Arkansas Board of Apportionment* (2022), you acknowledged, "From what the Court has seen thus far, there is a strong merits case that at least some of the challenged districts in the Board Plan are unlawful under Section 2 of the Voting Rights Act."

What led you to conclude that there were strong merits that some of the challenged districts in the Board Plan were unlawful?

Response: I issued this Order more than four and a half years ago. I cannot recall the specific evidence that led me to make the statement you reference. What I can recall is that my overall analysis of the evidence provided during the preliminary injunction hearing suggested that Plaintiffs would more likely than not be able to satisfy the then-governing *Gingles* test with respect to some of the challenged districts. I was careful, however, to note that the underlying merits were not entirely clear cut in favor of Plaintiffs and that, as Justice Kavanaugh phrased it, the *Gingles* test was "notoriously unclear and confusing." *Merrill v. Milligan*, 142 S. Ct. 879, 881 (2022) (Kavanaugh, J., concurring in Order granting stay of preliminary injunction). Subsequent to my Order, the *Gingles* test has been significantly refined by *Louisiana v. Callais*. *See generally* 608 U.S. 85 (2026). The Order I issued should not be taken in any way to suggest how Plaintiffs' claims would have fared under the *Callais* test. Since I did not have an opportunity to analyze the evidence presented under the subsequently-announced *Callais* test, I do not know what I would have thought of the evidence as measured against this yardstick.

2. According to your Questionnaire, you have served on the board of directors of the Judicial Education Institute (JEI) since 2021. A 2024 *Huffington Post* article titled, "Inside the Ritzy Retreats Hosting Right-Wing Judges," described one of the organization's lavish ski resort retreats in 2022 which brought together conservative judges.[1] Since the organization's incorporation in 2020, JEI has reportedly raised roughly $1.3 million from Charles Koch and Donor's Trust, which the article identifies as "the dark-money ATM of the conservative movement."[2]

a. Were you aware of JEI's funding sources when you decided to become a member of its board of directors?

To the best of my recollection, I was a member of the Board of Directors of the Judicial Education Institute since the founding of the organization and thus before it had any donors. During my tenure on the Board of Directors, the principal focus of the Judicial Education Institute has been educating judges on (1) the potential utility of a corpus

[1] Molly Redden, *Inside the Ritzy Retreats Hosting Right-Wing Judges*, HUFFPOST (Mar. 26, 2024), https://www.huffpost.com/entry/judges-luxury-travel-corpus-linguistics_n_65f75ff6e4b0defe9b276601.
[2] *Id.*

linguistics analysis to interpretating the words of a particular legal text, (2) the language databases available for such analysis; and (3) the methods by which such an analysis can be conducted. My role on the Board of Directors has been primarily to provide the organization with a judge's perspective on what type of educational activities would be most helpful to judges as they evaluate the utility—both the philosophical utility and practical utility—of corpus linguistics. From the beginning of my time on the Board, I was very clear with JEI that I believed I should not have anything to do with its fundraising efforts. Accordingly, I only have line of sight into JEI's financial/fundraising/donation information as is minimally necessary for me to carry out my role as a board member. To be clear, I do not have detailed information concerning JEI's fundraising and donation activities.

b. Did you attend the ski resort retreat in 2022?

Response: No.

c. How many JEI-sponsored retreats have you attended? Please provide the dates and destinations of these retreats.

Response: To the best of my recollection, I have attended only one conference put on by the Judicial Education Institute. That conference was in White Sulphur Springs, West Virginia from February 20-24, 2022.

In response to this story, a spokesperson for the Judicial Conference pointed to its advisory stating judges should consider whether their attendance at an event "promotes public confidence in the integrity and impartiality of the judiciary."

d. How can the public have any confidence in your impartiality given your affiliation with this organization?

Response: Please see my response to Question 2.a. No advisory opinion or ethics ruling has ever suggested that serving on the Board of the Judicial Education Institute, or attending one of its conferences, violates the Code of Conduct for United States Judges or any other ethics regulation. That is for good reason. The Judicial Education Institute offers legal training—for any judge that wants it—in the nuts and bolts of performing originalist and textualist research. Judges appointed by Presidents of both political parties have attended JEI trainings. The Code of Conduct for United States Judges explains that "[a] judge may participate in and serve as a member, officer, director, trustee, or nonlegal advisor of a nonprofit organization devoted to the law, the legal system, or the administration of justice . . . ." In light of the foregoing, it would simply not be reasonable to question my impartiality as a judge based on service to an organization that seeks to educate judges on how to most fairly and accurately perform originalist and textualist analysis.

3. In 2013 and 2015, you signed on to two Supreme Court amicus briefs in support of same-sex marriage, including in *Obergefell v. Hodges*. During your Senate confirmation hearing in

2019, however, you walked back your support for these briefs and expressed regret for joining them. Apparently, this confirmation conversion was required to win the support of Republican Senators.

In *Arkansas NAACP v. Arkansas Board of Apportionment*, you expressed your support for other vehicles of social progress like the Voting Rights Act, by saying: "The question is not whether the Court believes the Voting Rights Act has been and continues to be a force for good and progress in our society. (I do.)"

a. Do you think that the *Obergefell* decision was a force for good and progress in our society?

Response: As a sitting federal district judge and a nominee to the Eighth Circuit, I do not believe it is appropriate for me to grade, or give a thumbs up or a thumbs down to, Supreme Court decisions. *Obergefell* is a precedent of the Supreme Court and I will faithfully apply it. If you are asking whether I like the outcome of *Obergefell* as a matter of policy, I join a long line of sitting judges and nominees of both parties in not answering such questions.

b. Should you decline to comment, please explain why it was appropriate to express your opinion on the Voting Rights Act in this case and why you cannot express your views on *Obergefell*?

Response: The principal merits of a judicial nominee not giving a legal or policy-based thumbs up or a thumbs down to a particular Supreme Court precedent is to (1) avoid leaving future litigants with the misimpression that a nominee has prejudged whether he would apply those precedents broadly or narrowly; (2) avoid leaving the misimpression that a nominee will apply those precedents he likes broadly and those precedents he doesn't like narrowly; and (3) avoid giving any hints, forecasts, or previews as to how a nominee will rule on an adjacent issue. But none of this means that it would be inappropriate for a judge carrying out his adjudicative function—particularly in terms of opinion writing—to discuss, distinguish, criticize, or raise concerns about a particular precedent or statute. Many jurists who declined at their confirmation hearing to give a legal or policy thumbs-up or thumbs-down to particular Supreme Court precedents also speak positively about the Voting Rights Act in written opinions. *See, e.g.*, *Shelby Cnty., Ala. v. Holder*, 570 U.S. 529, 548 (2013) (explaining that the Voting Rights Act "has proved immensely successful at redressing racial discrimination and integrating the voting process"); *id. at* 562 (Sotomayor, J., dissenting) (explaining that the Voting Rights Act "became one of the most consequential, efficacious, and amply justified exercises of federal legislative power in our Nation's history"); *id.* at 593 (Sotomayor, J., dissenting) (explaining that, "[t]hanks to the Voting Rights Act, progress once the subject of a dream has been achieved and continues to be made"); *Allen v. Milligan*, 599 U.S. 1, 10 (2023) (explaining that many consider the Voting Rights Act "the most successful civil rights statute in the history of the Nation").

None of this is particularly surprising. There are often differences between what is appropriate for a judge to do outside of his adjudicative responsibilities versus within his

adjudicative responsibilities. For one example, consider that, although "[a] judge should not make public comment on the merits of a matter pending of impending in any court[,]" this "prohibition . . . does not extend to public statements made in the course of the judge's official duties . . . ." *See* Code of Conduct for United States Judges, Canon 3, Section 6. So, while it would generally be inappropriate for me to comment outside the courtroom on the decision of another district court judge if that decision is still on appeal, it would not be inappropriate for me to do so in a written Order in a particular case. Indeed, fully responding to the arguments of a party sometimes requires me to comment on the persuasive or lack of persuasiveness of the decision of another district court judge while that decision is on appeal. In my view, this distinction applies to the question you ask. There are times where the adjudicative role of a judge requires or counsels discussion of a statute or precedent in an opinion in ways that the judge would not discuss the statute or precedent outside the courtroom.

c. Do you believe *Obergefell* should be revisited?

Response: As a federal district court judge and a nominee to the Eighth Circuit, I do not believe it is appropriate for me to grade or give a thumbs or thumbs down to particular Supreme Court decisions. *Obergefell* is a precedent of the Supreme Court, and I will faithfully apply it.

4. As you are aware, a group of federal judges sent a letter to Columbia University in 2024, criticizing the university's response to protests on campus following Hamas's October 7 attack on Israel and announcing they would not hire law clerks who attended the law school. Public reporting indicated that you considered signing that letter but ultimately did not.

a. Why did you decide not to join that letter?

Response: When the letter was first circulated, I had limited time to decide whether I thought this action would be a net-positive or net-negative. Additionally, to the best of my recollection, at that time, I had either had zero applicants or one applicant from Columbia Law School. When the letter went out, I hadn't made up my mind on what to do.

Instead, you sent an email to incoming clerks asking them to confirm they had not done anything that could be construed as condoning the October 7 Hamas attack on Israel, antisemitism, or Islamophobia.

b. Why did you decide to take this approach?

Response: If my incoming clerks had done any of these things, I wanted to talk to them further about what they had done to determine whether such conduct was incompatible with the judgment, integrity, and respect that I think is necessary in law clerks.

c. Please provide some examples of actions that would disqualify a law clerk from serving in your chambers.

Response: As your question suggests, I can't possibly identify an exhaustive list of disqualifying conduct. But a very few examples are murder, rape, racism, and violent threats or behavior.

5. Following your judicial mission trip to Israel, you gave a presentation titled, "Seven Myths about Israel, the October 7th Attack & the Ensuing War: Reflections from a Judicial Education Mission." However, your presentation listed only three myths. I understand that due to time constraints you did not have sufficient time to run through the remaining myths in your presentation.

a. What are the other four myths that you intended to discuss?

Response: You are correct that, given time considerations, the seven-myths presentation I intended to create and give turned into a three-myths presentation. I omitted some topics I initially intended to discuss when sitting down to create the presentation; other topics I collapsed into the three myths presented. Had I had more time to present, I would have discussed additional misperceptions that people have concerning the demographics, geography, and history of the state of Israel, as well as additional misperceptions people have concerning the goals of Hamas' October 7 attack.

At the Committee's September 24, 2026 Executive Business Meeting, Chairman Grassley said it was "unacceptable" that several federal judges publicly discussed their concerns about threats to the rule of law. He cited the Judicial Conference's advisory opinion, which he said cautions judges to speak on limited topics such as the history and operation of the courts and the importance of jury service. However, you have provided substantial public commentary related to the October 7 Hamas attack on Israel and the ongoing war.

b. Do you believe it is appropriate for you to speak on this topic?

Response: Yes.

c. Do you believe it is inappropriate for judges to express concerns on threats to the rule of law? If so, what distinguishes your speech from theirs?

Response: I have not seen Chairman Grassley's full comments, nor do I know what specific statements from judges he was responding to. So I can't and won't comment on that specific matter. What I can say is that I believe judges are entitled to express good-faith concerns about threats to the rule of law so long as they make sure to do so in a way that is not partisan or lend the prestige of the judiciary to a particular side of a partisan political fight.

6. You served as Deputy General Counsel for Mitt Romney's 2012 presidential campaign and served on his judicial advisory council. From 2003 to 2004, you served as a law clerk in then-Governor Romney's Administration.

a. President Trump previously called then-Senator Romney "a pompous 'ass'" and a "Democrat secret asset." Do you agree with these characterizations?

Response: I've never referred to Senator Mitt Romney in this way. As a sitting federal judge, I am not going to comment on the statements that President Trump has made about other individuals that hold or have held political office. That veers into the type of political activity that the Code of Conduct for United States Judges instructs judges to refrain from engaging in.

You fundraised for Ron DeSantis's Congressional campaign in 2012. You also fundraised for Jeb Bush's 2016 presidential campaign when he ran against President Trump during the Republican primary.

b. President Trump previously claimed, "The problem with Ron DeSanctimonious is that he needs a personality transplant, and those are not yet available." Do you agree with this assessment?

Response: I've never referred to Governor Ron DeSantis in this way. As a sitting federal judge, I am not going to comment on the statements that President Trump has made about other individuals that hold or have held political office. That veers into the type of political activity that the Code of Conduct for United States Judges instructs judges to refrain from engaging in.

c. President Trump has called Bush "poor" and "pathetic." Do you agree with this assessment?

Response: I've never referred to Governor Jeb Bush in this way. As a sitting federal judge, I am not going to comment on the statements that President Trump has made about other individuals that hold or have held political office. That veers into the type of political activity that the Code of Conduct for United States Judges instructs judges to refrain from engaging in.

You also served as a volunteer lawyer for John McCain's 2008 presidential campaign. Senator McCain was one of President Trump's first targets early in his 2016 presidential run. Then-candidate Trump said: "He's not a war hero…because he was captured. I like people who weren't captured." Even after Senator McCain's death, Trump continued to attack him, saying: "I never was a fan of John McCain, and I never will be."

d. Do you reject President Trump's attacks on Senator McCain?

Response: I've never said anything like this about Senator John McCain. As a sitting federal judge, I am not going to comment on the statements that President Trump has made about other individuals that hold or have held political office. That veers into the type of political activity that the Code of Conduct for United States Judges instructs judges to refrain from engaging in.

e. Do you agree that our political leaders should refrain from personal attacks such as these?

Response: As a sitting federal judge, except as necessary to adjudicate cases involving the First Amendment, I am not going to tell the President of the United States, Senators, Congressman, or any other political actors what speech is acceptable and what speech isn't acceptable. I am certainly not going to do it when each side of the political aisle is criticizing the other side for the language they use. That veers into the type of political activity that the Code of Conduct for United States Judges instructs judges to refrain from engaging in.

7. From 2016 to 2017, you served as a member of the Arkansas Bar Commission on Diversity and Inclusion (ABCDI).

a. During your service on the ABCDI, the Commission's diversity statement explained, "A more diverse bar enables greater innovation and more civility in the legal professions by exposing its member to a wide variety of backgrounds, perspectives, life experiences, and talents." Do you agree with this statement? Please explain why or why not.

Response: I do not know when that diversity statement was written. To the best of my recollection, I did not write it or know about it when I was on the Committee. Also, to the best of my recollection, my work was limited to helping arrange for a panel of speakers—on the topic of diversity and the law—at an annual bar conference. I am certainly in favor of bar organizations discussing all sorts of topics—especially with panels of speakers of divergent views—and this would include discussing the issue of diversity in the law. I am not sure what the statement meant when it said "greater innovation" and "more civility," but I do agree that—holding all else equal—having people of different professional and personal backgrounds in the bar can broaden the expertise and perspective windows of the bar as a whole.

b. **It also stated, "By mirroring the diverse population of Arkansas, a diverse bar and bench would provide greater understanding and access to justice to all its citizens." Do you agree with this statement? Please explain why or why not.**

Response: See my response to Question 7.a.

8. Did President Trump lose the 2020 election?

Response: Under our Constitution, the way you win a Presidential election is that you are certified the winner of the electoral college. Joe Biden was certified the winner of the electoral college. To the extent you're asking me more than this, as a long line of nominees including Justice Jackson said, as a sitting judge, it would be inappropriate for me to comment. I believe commenting further would veer into the type of political matters that the Code of Conduct for United States Judges instructs me to refrain from commenting on.

9. Where were you on January 6, 2021?

Response: Arkansas.

10. Do you denounce the January 6 insurrection?

Response: As I said at my confirmation hearing, I condemn in the strongest possible terms the violence and lawlessness that took place on January 6, 2021. To the extent your question asks anything beyond this, commenting would veer into the type of political activity that the Code of Conduct for United States Judges instructs me to refrain from engaging in.

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

Response: As a sitting federal judge, and outside the context of a case implicating the pardon power, it would be inappropriate for me to tell the President of the United States how and when he can, can't, should, or shouldn't use that power. That would veer into political activity that the Code of Conduct for United State Judges instructs judges to refrain from engaging in.

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

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

Response: As a general matter, parties to a proceeding (including all government entities and officials) must follow court orders and, if they disagree with such orders, the proper way to obtain relief is to seek review of the order in a higher court. But both the Supreme Court and legal scholars have suggested the existence of rare circumstances that might make it appropriate for litigants to disobey court orders. *See Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 111 (2009); William Baude, *The Judgment Power*, 96 Geo. L.J. 1807 (2008); Gary Lawson & Christopher D. Moore, *The Executive Power of Constitutional Interpretation*, 81 Iowa L. Rev. 1267, 1326 (1996); 17 Corpus Juris Secundum Contempt §§ 56-65.

b. 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 response to Question 12.a. I can easily foresee various iterations of this question coming before me, either now on the federal district court or on the Eighth Circuit if I am lucky enough to be confirmed. It would thus be inappropriate for me to prejudge the universe of potential defenses to defiance of a federal court order.

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

Response: As a general matter, the highest court in the judiciary to consider the issue will be the ultimate arbiter of the lawfulness of a federal court order.

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

a. Are non-party injunctions constitutional?

In *Trump v. CASA*, 606 U.S. 831 (2025), the Supreme Court has concluded that, as a general matter, the injunctions you reference exceed the authority courts have under the Judiciary Act of 1789. But the Court left open the question of whether such injunctions violate the United States Constitution. I could easily envision a case raising this question coming before me either as a federal district court judge or an Eighth Circuit judge were I lucky enough to be confirmed. It would be inappropriate for me to prejudge the issue except to say that I will faithfully apply any binding precedent on the issue in place at the time of my decision.

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

Response: Please see my response to Question 13.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 responses to Question 13.a.

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

Response: As Solicitor General of Arkansas, I would have very likely sought the type of injunctions you reference against the federal government or its various entities and officials. This is particularly true where Arkansas was a part of multi-state litigation against the federal government or its various entities and officials. But I do not recall the specific cases in which I did so. Also, I may have sought such injunctions as a litigator at Kirkland & Ellis, but I cannot recall.

14. 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.

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

Response: Although I can't and won't prejudge a case that might come before me, the language of the 22nd Amendment is clear that an individual elected to two terms as President can't be elected to a third term. The language is also clear that an individual who (after appointment) has served more than two years of someone else's term can only be elected to one term of his own.

16. 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…"[3]

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: I haven't seen the President's post and I don't know which judges he is talking about. I have never used this language or language like it when referring to any judge. Outside the context of adjudicating cases involving the First Amendment, a sitting judge should not be telling the President of the United States, Senators, Congressmen, or other political figures what speech is acceptable and what speech is unacceptable. That veers into the type of political activity that the Code of Conduct for United States Judges instructs judges to refrain from engaging in. This is especially true when each political side is criticizing things the other political side is saying.

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

Response: Please see my response to Question 16.a.

17. 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"[4] and later reposted the images of the three judges who decided the case and wrote, "we are living under a judicial tyranny."[5]

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 response to Question 16.a.

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

Response: Please see my response to Question 16.a.

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[3] Donald J. Trump (@realDonaldTrump), TRUTH SOCIAL (May 26, 2025, 7:22 AM), https://truthsocial.com/@realDonaldTrump/posts/114573871728757682.
[4] Stephen Miller (@StephenM), X, (May 28, 2025, 7:48 PM), https://x.com/StephenM/status/1927874604531409314.
[5] Stephen Miller (@StephenM), X, (May 29, 2025, 8:25 AM), https://x.com/StephenM/status/1928065122657845516.

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: Yes.

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

Response: A lower court may never depart from on-point Supreme Court precedent.

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

Response: In the Eighth Circuit, a three-judge panel is not authorized to overturn precedent from a prior three-judge panel unless that precedent has been "cast into doubt by a decision of the Supreme Court." *Patterson v. Tenet Healthcare*, *Inc.*, 113 F.3d 832, 838 (8th Cir. 1997). With respect to the power of the Eighth Circuit sitting *en banc*, the Eighth Circuit has said that overturning circuit precedent "is appropriate when the precedent is 'erroneous' and 'perpetuates unwarranted disuniformity in the law.'" *S.A.A. v. Geisler*, 127 F.4th 1133, 1136 (8th Cir. 2025) (en banc) (citation omitted); *see generally* Fed. R. App. P. 40(b)(2). I will faithfully apply this standard unless and until the Eighth Circuit, sitting *en banc*, chooses some other standard—in which case I'll apply that one.

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

Response: In *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022), the Supreme Court set out the current standard used to determine whether that Court should overrule its own precedent. To the extent your question is asking whether I agree or disagree with the standard set out in *Dobbs*, as a sitting federal district court judge and a nominee to the Eighth Circuit, it would not be appropriate for me to give a thumbs up or thumbs down to, or otherwise grade, particular Supreme Court cases.

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

a. Brown v. Board of Education

Response: I have explained elsewhere why sitting federal judges generally should not be grading, or giving a thumbs up or thumbs down, to particular Supreme Court precedents. *See, e.g.,* Response to Question 3.b. But in light of (1) the truly exceptional place that *Brown* and *Loving* hold in the legal, social, and historic fabric of our country, (2) the fact that those cases are so incredibly far beyond dispute that judges and nominees can express their agreement with them without calling into question their ability to fairly and faithfully apply Supreme Court precedent, and (3) the long line of former judges and nominees of Presidents of both parties who have answered this question regarding *Brown* and *Loving*, I am comfortable telling you that I believe both *Brown* and *Loving* were

correctly decided. As to all other Supreme Court cases, I believe the general rule against grading still applies and judges and nominees must—as a long line of judges and nominees of Presidents of both parties have—simply say they will faithfully and fairly apply Supreme Court precedent (as I will do) and leave it at that.

b. Plyler v. Doe

Response: Please see my response to Question 21.a.

c. Loving v. Virginia

Response: Please see my response to Question 21.a.

d. Griswold v. Connecticut

Response: Please see my response to Question 21.a.

e. Trump v. United States

Response: Please see my response to Question 21.a.

f. Dobbs v. Jackson Women's Health Organization

Response: Please see my response to Question 21.a.

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

Response: Please see my response to Question 21.a.

h. Obergefell v. Hodges

Response: Please see my response to Question 21.a.

i. Bostock v. Clayton County

Response: Please see my response to Question 21.a.

j. Masterpiece Cakeshop v. Colorado

Response: Please see my response to Question 21.a.

k. 303 Creative LLC v. Elenis

Response: Please see my response to Question 21.a.

l. *United States v. Rahimi*

Response: Please see my response to Question 21.a.

m. ***Loper Bright Enterprises v. Raimondo***

Response: Please see my response to Question 21.a.

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

Response: Lower court judges are bound by on-point precedents of the Supreme Court and any other court that sits above them. Where there are no such precedents dictating either a result or a particular method of analysis, judges should interpret the language of a constitutional provision by analyzing what an ordinary reasonable person at the time of the provision's enactment would have understood the language to mean. Once a judge determines the meaning of the language of a constitutional provision, that judge must apply the meaning to whatever set of facts are before him.

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

Response: Please see my response to Question 22.

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

Response: Please see my response to Question 21.a.

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

Response: Please see my response to Question 21.a, particularly with respect to my reference to *Loving v. Virginia*. The decision in *Loving* has been persuasively defended on originalist grounds. *See, e.g.*, Steven C. Calabresi and Andrea Matthews, *Originalism and* Loving v. Virginia, 2012 B.Y.U. L. Rev. 1393 (2012).

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

Response: Section 1 of the Fourteenth Amendment says that (1) no state shall "deprive any person of life, liberty, or property, without due process of the law;" and (2) no state shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. const. amend XIV § 1. The first portion of the foregoing sentence is colloquially known as the Due Process Clause. The second portion of the sentence is colloquially known as the Equal Protection Clause.

The Due Process Clause has been held to have both a procedural component and a substantive component. The procedural component includes protections that speak to the thoroughness and

fairness of the process used to deprive an individual of life, liberty, or property. *See, e.g.*, *Mathews v. Eldridge*, 424 U.S. 319 (1976). The Supreme Court has generally pegged the amount of procedural process due to the severity of the government's intrusion on life, liberty, or property. *See id.* at 335. The substantive component of due process affords certain rights—those "deeply rooted in our history and tradition" and "essential to our Nation's scheme of ordered liberty"—very strong protections against government interference. *See Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 237-38 (1997) (citing *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997). Most of the rights in the Bill of Rights, and some rights not expressly mentioned in the Constitution, have been held to come within the protection of the substantive due process doctrine. *See, e.g.*, *Timbs v. Indiana*, 586 U.S. 146, 150 (2019); *Lawrence v. Texas*, 539 U.S. 558, 578-79 (2003).

The Supreme Court has made clear that the Equal Protection Clause protects against government arbitrarily classifying individuals using irrelevant characteristics. The Clause accomplishes this by subjecting legislation or other government actions that differentiate between individuals to varying levels of judicial scrutiny. As a general matter, if the legislation or other government action at issue classifies individuals by race, alienage, or nation origin, it will be found unconstitutional unless it is narrowly tailored to serve a compelling state interest (strict scrutiny). *See Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181, 206–07 (2023). If the legislation or other government action at issue classifies individuals by sex, it will be found unconstitutional unless the means employed are substantially related to achieving an important governmental objective (intermediate scrutiny). *See Craig v. Boren*, 429 U.S. 190, 197 (1976). If the legislation or other government action classifies on some other basis, it will pass constitutional muster if the classification is rationally related to a legitimate end (rational basis scrutiny). *See United States v. Skrmetti*, 605 U.S. 495, 510 (2025) (citation omitted). Notwithstanding the foregoing, regardless of the classification employed, if the classification made by the legislation or other government action at issue burdens a fundamental right, it will be subjected to strict scrutiny. *See San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 17 (1973).

27. 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: Please see my response to Question 26. I will faithfully apply Supreme Court precedent with respect to application of the Due Process clause and the Equal Protection clause of the Fourteenth Amendment, including but not limited to *Lawrence v. Texas*, *Romer v. Evans*, and *Obergefell v. Hodges*.

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

Response: I am unsure if this question is about the Due Process and Equal Protection Clauses or other portions of the Constitution. If the question is about the Due Process and Equal Protection Clauses, please see my responses to Questions 26 and 27. I believe judges must faithfully apply all on-point Supreme Court precedent when applying the Clauses you reference. That's what I do now. And that's what I will do in the future, whether on the federal district court or the

Eighth Circuit were I lucky enough to be confirmed. If the question is about other provisions of the Constitution, please see my response to Question 22. I believe judges must faithfully apply all on-point Supreme Court precedent when applying any provision of the Constitution, not just as to result but as to the appropriate mode of analysis. That's what I do now. And that's what I will do in the future, whether on the federal district court or the Eighth Circuit were I lucky enough to be confirmed.

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

Response: Please see my response to Question 22. I have not yet had a Foreign Emoluments Clause case as a judge or a lawyer. I have no legal opinions whatsoever about this Clause today.

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

Response: As a general matter, individuals and corporations whose speech rights, press rights, religious rights, assembly rights, and petitioning rights have been or are about to be violated are entitled to protection under the First Amendment. If you are asking about whether, when, and to what extent the Clause protects various sub-groups of non-citizens, I can envision numerous iterations of that issue being presented to me on the federal district court bench or at the Eighth Circuit were I lucky enough to be confirmed. Accordingly, the only thing that's appropriate for me to say, consistent with the Code of Conduct for United States Judges, is that I will faithfully apply all on-point precedents as they relate to that issue.

31. 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: Speaking very broadly, whether a law is content-neutral or content-based depends on whether the law can be applied "without reference to the content of the regulated speech." *Reed v. Town of Gilbert*, 576 U.S. 155, 166 (2015). If it can, it's usually content-neutral. Otherwise, it's usually content-based. Another way to get at this same point is to ask whether the law "targets speech based on its communicative content[,]" meaning "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). I will faithfully apply *Reed*, *City of Austin*, and all other applicable precedents in this area.

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

Response: The Supreme Court has recently reiterated its true-threats doctrine in *Counterman v. Colorado*, 600 U.S. 66, 74 (2023). Explaining that true threats are not protected by the First Amendment, the Supreme Court emphasized the high bar for a statement to qualify as a true threat. The Court explained:

> True threats of violence is another historically unprotected category of communications. The 'true' in that term distinguishes what is at issue from jests,

> 'hyperbole,' or other statements that when taken in context do not convey a real possibility that violence will follow (say, 'I am going to kill you for showing up late'). True threats are 'serious expression[s]' conveying that a speaker means to 'commit an act of unlawful violence.' Whether the speaker is aware of, and intends to convey, the threatening aspect of the message is not part of what makes a statement a threat . . . . The existence of a threat depends not on 'the mental state of the author,' but on 'what the statement conveys' to the person on the other end. When the statement is understood as a true threat, all the harms that have long made threats unprotected naturally follow. True threats subject individuals to 'fear of violence' and to the many kinds of 'disruption that fear engenders.'

Counterman v. Colorado, 600 U.S. 66, 73 (2023) (internal citations omitted). I will faithfully apply *Counterman* and all other applicable precedents in this area.

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

Response: Yes, the Supreme Court has said so in *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

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

Response: This question appears to ask about matters that are either the subject of ongoing litigation or might come before me on the district court or the Eighth Circuit were I lucky enough to be confirmed. Accordingly, it would not be appropriate under the Code of Conduct for United States Judges for me to comment further—except to say that I will faithfully apply all on-point precedents.

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

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

Response: The Supreme Court has said yes, with very limited exceptions. In *Trump v. Barbara*, the Supreme Court held that the Fourteenth Amendment's Citizenship Clause includes children born in the U.S. even if their parents are unlawfully or temporarily present in the country. 146 S. Ct. 2438, 2453 (2026). In that same opinion, the Court also noted that there are a few exceptions to this general rule, such as the children of ambassadors. *Id.* at 2456. As a district court judge, and a judge on Eighth Circuit if I am lucky enough to be confirmed, I will apply *Barbara* and all applicable Supreme Court and Eighth Circuit precedent.

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

Response: Please see my response to Question 35.a.

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

Response: I believe we, as a country, should strive to have judges that are eminently qualified lawyers who will put aside their policy preferences and dispassionately interpret the law as it is written. I certainly hope that using such neutral criteria would result in a bench that includes judges of many different personal and professional backgrounds. Holding all else equal, having judges of different personal and professional backgrounds can broaden the expertise and perspective windows of the judiciary.

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

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

Response: Where there are on-point precedents interpreting the Act, lower courts judges should faithfully apply those precedents. In the absence of on-point precedent suggesting otherwise, judges should impartially and dispassionately apply the Act as it is written. As with all legislative enactments, this is the right way for judges to carry out their constitutionally-assigned role with respect to the *First Step Act*.

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

Response: If I am lucky enough to be confirmed, I will fully and fairly consider all appeals that come before me, whether the appeal involves sentencing laws or any other subject. As to sentencing laws specifically, including the *First Step Act*, I will impartially and dispassionately apply those laws (and the on-point precedents interpreting those laws) to the facts of the case before me and I will ensure that the sentencing judge did not give a procedurally or substantively unreasonable sentence in light of the requirements of the applicable sentencing laws.

38. 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 that statement. I do not know who wrote it. I do not know what the author intended by using that term. And I do not know what the Federalist Society overall intended by using that term.

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.[6]

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 sitting federal judge and judicial nominee, I am not going to comment on the whether the President of the United States was given good or bad advice as to how he should exercise his power to nominate judges. That would veer into the type of political activity that the Code of Conduct for United States Judges instructs judges to refrain from engaging in.

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

Response: I have never made such comments about Mr. Leo, and they are not reflective of any interaction I personally have ever had with him. As a sitting federal judge and judicial nominee, I am not going to comment on the President's appraisal of someone who formerly gave him political advice. Again, that would veer into the type of political activity that the Code of Conduct for United States Judges instructs judges to refrain from engaging in.

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.

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

Response: I did not speak to or correspond with Mr. Leo at any point during my selection process. I spoke to Mr. Calabresi one time during my selection process, but not about the process. And, to the best of my recollection, this is the only time I have ever spoken to Mr. Calabresi. We happened to be seated next to each other at a conference dinner. Our conversation covered: (1) two of George Washington's letters to Jewish congregations; (2) Joaquim Gans's role in the Roanoke Colony and his status as the first Jew in North America, and (3) Haym Solomon's role in the American revolution.

The Federalist Society is an enormous organization, with nearly one hundred thousand members nationwide. I do not take your question to be referring to these nearly one hundred thousand members. I take your question to be about people who currently work at the Federalist Society. I have been long-time friends with two such people: Sheldon Gilbert and Isaac Workman. We have maintained contact over the years, including during the selection process. In some of these conversations, I have spoken to them about where I was in the selection process and my hope that the President would decide to nominate me.

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: I have spoken at Federalist Society events. I have moderated Federalist Society panels. And I have written at least one piece for the Federalist Society blog.

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

Response: No.

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

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

Response: I am not a member of the Teneo Network. I know very little about it other than the fact that it exists, and that a couple of my friends have briefly mentioned being members. I do not know who works at the Teneo Network. As I noted in my Response to Question 38.c, I have not spoken to or corresponded with Mr. Leo during my selection process.

Out of an abundance of caution, I will note that, during the selection process, I had one conversation with Grant Starrett, who I vaguely understand to have some type of leadership role with the group. Mr. Starrett is an old friend. We were catching up at a conference we both attended, and the focus of our conversation was not on the selection process. At some point in the conversation, I briefly mentioned that I was being

considered for an open Eighth Circuit seat. Mr. Starrett politely said something to the effect of "good luck in the process."

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

Response: No.

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

Response: No.

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

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

Response: I have not spoken to or corresponded with Kevin D. Roberts during my selection process. To the best of my knowledge, I have not spoken or corresponded with any individuals associated with the Heritage Foundation or Heritage Action during my selection process. But I need to caveat this statement by making clear that I do not know the universe of people "associated with" these two organizations.

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: To the best of my recollection, no.

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

Response: No.

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

Response: No.

41. 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. But I need to caveat this statement by making clear that I do not know the universe of people "associated with" this organization.

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.

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

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

Response: I have not spoken to or corresponded with Stephen Miller or Daniel Epstein during my selection process. I had one conversation with Gene Hamilton, but did not discuss my potential nomination. I briefly thanked him for speaking on a panel for which I was part of the audience. To the best of my knowledge, I have not spoken or corresponded with any other individuals associated with AFLI during my selection process. But I need to caveat this statement by making clear that I do not know the universe of people "associated with" this organization.

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

Response: No.

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

Response: No.

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

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

Response: I did not speak to or correspond with Mike Davis, Will Chamberlain, or Josh Hammer during my selection process. Out of an abundance of caution, I will note that I sent Mike Davis a thank-you text after I was nominated because I heard that he had complimented my current judicial service to the White House. To the best of my knowledge, I did not speak to or correspond with any individuals associated with the Article III Project during my selection process. But I need to caveat this statement by making clear that I do not know the universe of people "associated with" this organization.

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: I was recently invited to an Article III Project event in Washington D.C. I did not attend because I was back home in Arkansas.

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.

44. 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: Yes. Kellie Fiedorek, Kristen Waggoner, and I have been friends since I worked with them on various matters when I was Solicitor General of Arkansas. We have maintained communication since then, including during the selection process. In some of these conversations, I have spoken to them about where I was in the selection process and my hope that the President would decide to nominate me.

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 spoken at ADF events a few times since 2015. When I was Solicitor General of Arkansas, I helped ADF prepare for the oral argument of *Masterpiece Cakeshop* before the Supreme Court.

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

Response: To the best of my recollection, no.

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

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

Response: I did not speak to or correspond with Mr. Leo during my selection process. I did not speak to or correspond with Ms. Severino during my selection process. Out of an abundance of caution, I note the following. In August of 2026, I sent Ms. Severino a text thanking her for a congratulatory post she made about my nomination on social media. In September of 2026, on the morning of my confirmation hearing, Ms. Severino sent me a text saying she was praying for me. After the hearing, I sent her a thank-you text.

To the best of my knowledge, I did not speak or correspond with any other individuals "associated with" the Concord Fund/Judicial Crisis Network or the 85 Fund/Honest Election Project/Judicial Education Project during the selection process. But I need to caveat this statement by making clear that I do not know the universe of people "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: 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 familiar with the Concord Fund or the 85 Fund. And I have never heard of any group or special interest making undisclosed donations to any entity in support of my nomination. Whether I remain on the district court or am lucky enough to

be confirmed to the Eighth Circuit, my decision-making will not be affected in any way by anyone's or any entity's advocacy for or against my nomination.

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: Please see my response to Question 45.d. As to recusal issues, 28 U.S.C. § 455 requires, inter alia, that a judge recuse from "any proceeding in which his impartiality might reasonably be questioned." With respect to appearances of impropriety, this is the primary standard I would use to determine the appropriateness of my recusal in any particular proceeding. I would of course also consult and apply the Code of Conduct for United States Judges, as well as any other legal authorities that apply to a particular recusal issue.

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

Response: If you are asking whether I think such donations are good or bad as a matter of policy, commenting on such things veers into the type of political activity the Code of Conduct for United States Judges instructs judges to refrain from engaging in. It would thus be inappropriate for me as a sitting judge and judicial nominee to comment on this subject.

Nomination of Lee Philip Rudofsky
Nominee to the U.S. Court of Appeals for the Eighth Circuit
Questions for the Record
Submitted October 7, 2026

QUESTIONS FROM SENATOR WHITEHOUSE

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

1. In 2017, you wrote a letter to the Senate Judiciary Committee supporting Jeffrey Clark's nomination to be Assistant Attorney General of the Environmental and Natural Resources Division at DOJ. You said, "Mr. Clark's ethics and integrity are also beyond reproach."

a. Describe your relationship with Jeffrey Clark.

Response: Mr. Clark was one of the lawyers I worked with at Kirkland & Ellis back in the late 2000s and early 2010s. We also co-taught a law school class at George Mason together in spring of 2009. Since I left Kirkland in 2014, Mr. Clark and I speak or text a few times per year.

b. Clark facilitated attempts to overturn the 2020 presidential election. Do you still think his ethics and integrity are beyond reproach?

Response: I believe the matter you reference is the subject of current bar disciplinary proceedings as well as active litigation. Accordingly, as a sitting federal judge, it would not be appropriate under the Code of Conduct for United States Judges for me to comment.

2. In 2016, you supported Scott Pruitt's nomination to be Administrator of the EPA, writing that the EPA "earned its reputation as the most lawless executive agency" and suggesting that Pruitt is "just the person" to "reign[] [sic] in the significant and lawless excesses of the agency." Pruitt had to resign as EPA Administrator because of ethics scandals, including spending hundreds of thousands of dollars on excessive travel and unjustified security.

a. Do you still think Pruitt was the right person to address "lawless excesses" at the EPA?

Response: As a sitting federal judge, it would not be appropriate for me to comment on whether the President selected "the right person" to run any particular agency. The Code of Conduct for United States Judges instructs judges not to publicly wade into this type of political commentary.

3. You sit on the board of directors of the Judicial Education Institute, which has accepted more than $1 million from Koch-funded dark money groups, including DonorsTrust and Stand Together Fellowships.

a. Who are the other donors to Judicial Education Institute?

Response: During my tenure on the Board of Directors, the principal focus of the Judicial Education Institute has been educating judges on (1) the potential utility of a *corpus linguistics* analysis to interpretating the words of a particular legal text, (2) the language databases available for such analysis; and (3) the methods by which such an analysis can be conducted. My role on the Board of Directors has been primarily to provide the organization with a judge's perspective on what type of educational activities would be most helpful to judges as they evaluate the utility—both the philosophical utility and practical utility—of *corpus linguistics*.

From the beginning of my time on the Board, I was very clear with JEI that I believed I should not have anything to do with its fundraising efforts. Accordingly, I only have line of sight into JEI's financial/fundraising/donation information as is minimally necessary for me to carry out my role as a board member. To be clear, I do not have detailed information concerning JEI's fundraising and donation activities. Accordingly, I am answering the instant question and the below questions to the best of my limited ability and understanding.

Having said all that, and aside from the groups you mention in the preamble to your question, I understand that the Hertog Foundation, the Utah Valley University's Center for Constitutional Studies, the Academy for Creating Enterprise, and the Society for the Rule of Law are JEI donors. I also understand that there are also some small dollar federal judge donors.

b. Does the institute accept donations from groups affiliated with Leonard Leo? If so, please list the organizations.

Response: Please see my response to Question 3.a. I generally understand that JEI has solicited donations from organizations affiliated with Leonard Leo. I do not know which specific organizations were solicited, and I do not know which have donated.

c. Do the donors have influence over the substantive continuing legal education Judicial Education Institute provides?

Response: To the best of my knowledge, no.

d. Are the donors present at the events Judicial Education Institute hosts?

Response: To the best my knowledge, not usually. Small-dollar judge donors sometimes attend conferences in their role as judges. Also, I understand that, at one JEI conference teaching judges how to perform research concerning the original public meaning of constitutional provisions, members of the Utah Valley University's Center for Constitutionals Studies participated.

e. Are attendees made aware of the identities of the donors sponsoring Judicial Education Institute events?

Response: As I understand things, the premise of your question is not accurate. To the best of my knowledge, donors to JEI do not sponsor specific events. All donations made to JEI are made to the general operating fund.

4. You said in your questionnaire that you have been a member of the Federalist Society since 2002. Have you ever spoken with the following individuals or groups about your nomination? If so, please describe the conversation(s) with specificity.

a. Leonard Leo?

Response: No.

b. Anyone affiliated with an entity led or funded by Leonard Leo?

Response: I do not know the universe of entities led or funded by Leonard Leo. And I am not sure what exactly you mean by the phrase "affiliated with." It is therefore impossible for me to answer this question accurately. Out of an abundance of caution, and because it is probably responsive to your question, I note that I have been friends with Jonathan Bunch and O.H. Skinner for nearly two decades. In those two decades, we have had several conversations in which I have expressed my interest in serving my state and country as a judge, including on the Eighth Circuit.

c. Carrie Severino?

Response: In August of 2026, I sent Ms. Severino a text thanking her for a congratulatory post she made about my nomination on social media. In September of 2026, on the morning of my confirmation hearing, Ms. Severino sent me a text saying she was praying for me. After the hearing, I sent her a thank-you text.

d. Mike Davis?

Response: In August of 2026, after I was nominated, I sent Mr. Davis a thank-you text because I heard that he had complimented my current judicial service to the White House.

e. Anyone affiliated with The Article III Project?

Response: Please see my response to Question 4.d. Other than Mr. Davis and the people specifically mentioned on the "About" page of the Article III Project website, I don't know who else is affiliated with the Article III Project. I have answered this Question to the best of my knowledge.

f. Mark Paoletta?

Response: No.

Senate Judiciary Committee
Hearing on Nominations
September 30, 2026
Questions for the Record
Senator Amy Klobuchar

For Lee Philip Rudofsky, to be U.S. Circuit Judge for the Eighth Circuit

In 2022, you ruled that Section 2 of the *Voting Rights Act* (VRA) may only be enforced by the Attorney General of the United States. You acknowledged that you were "the first federal court in the nation to affirmatively conclude that the judiciary may not imply a private right of action to enforce § 2."

- Isn't it true that as a consequence of your ruling, and subsequent circuit court action, private citizens and organizations in Minnesota can no longer enforce the protections granted under Section 2 of the VRA?

Response: I do not believe so. I am a federal district court judge in Arkansas. My decision applied only to the parties before me. As you know, a federal district court judge's decision does not even bind other judges in the same district, let alone judges in other districts in other states. Moreover, my decision left open the possibility that private citizens and organizations could enforce the protections granted under Section 2 of the VRA by way of an action under 42 U.S.C. § 1983. In the case over which I presided, Plaintiffs had not brought a 1983 claim and so I did not rule on the propriety of such a claim. *See Arkansas State Conference NAACP v. Arkansas Board of Apportionment*, 586 F. Supp. 3d 893, 906 n.76 (E.D. Ark. 2022).

In your role as the Arkansas Solicitor General, you defended the state's efforts to restrict access to reproductive care including through a 12-week abortion ban and defunding Planned Parenthood.

- What would you say to litigants who question that you can be evenhanded in applying the law, including to women trying to vindicate their rights?

Response: Like all litigators, my job as Solicitor General was to advocate as zealously as possible for the position of my client within the bounds of professional responsibility. In the cases you reference, that meant defending the applicable state statutes and executive actions to the best of my professional abilities. It would be unreasonable for future lawyers and litigants to confuse my then-required zealous advocacy on behalf of clients with my current (and future) responsibilities of fairly, impartially, and dispassionately applying the law as it is written and binding precedent from the Supreme Court and Eighth Circuit. I take my judicial duty of fairness, impartiality and dispassion incredibly seriously, have done so every day since taking the bench 7 years ago, and will continue to do so for as long as I am blessed to be a federal judge.

Nomination of Lee Rudofsky
to be United States Circuit Judge for the Eighth Circuit
Questions for the Record
Submitted October 5, 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 Senate is charged with providing the President with advice and consent with respect to judicial nominees. How the Senate discharges that responsibility is for it to decide.

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

Response: Yes, except where the Code of Conduct for United States Judges, privileges like the attorney-client privilege, or other well-established ethical precepts require a nominee to refrain from answering a particular question or require a nominee to limit themselves to a partial answer.

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 wrote all the answers to your questions myself. The Office of Legal Policy provided grammar, style, formatting, and other technical suggestions. I accepted or rejected those suggestions as I saw fit.

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: As a general matter, no. However, at times, there is really only one way to say something (like "yes" or "no"), in which case a nominee's answer to a question may happen to be the same as a previous nominee's answer if the two nominees substantively agree on what the answer should be. Additionally, there might be rare occasions where a current nominee believes a past nominee's answer to a specific question encapsulates how the current nominee believes the question should be answered.

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

Response: Yes. I prepared for my confirmation hearing as you would expect a lawyer to prepare for one of the most important processes of his professional life. That included watching numerous prior hearings and reading numerous prior QFRs. But the answers that I gave in my confirmation hearing and the answers I am now giving in response to the QFRs are my own.

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

Response: Except for the circumstances set forth in response to Question 3.b, to the best of my recollection, no.

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: To the best of my recollection, no.

5. In your Senate Judiciary Questionnaire, you note that President Trump called you on August 12, 2026, to inform you that he planned to nominate you to a judgeship.

a. How long did the call last?

Response: Three minutes.

b. What topics or issues were discussed?

Response: The call involved President Trump informing me that he intended to nominate me to the Eighth Circuit and me thanking President Trump for this honor and for his nomination of me to the District Court in 2019.

c. Other than you and President Trump, did anyone else join the call? If so, who?

Response: Only the President and I were active participants in the call. I understand one or more people from the White House were with the President at the time of his call.

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

Response: I think Judges Morris Arnold and D. Price Marshall are excellent ethical role models.

7. How would you describe your judicial philosophy?

Response: As a federal district court judge, I am bound by on-point precedent from the Eighth Circuit and the Supreme Court. Were I lucky enough to be confirmed to the Eighth Circuit, I would be similarly bound. I will faithfully and fully apply all on-point precedent. Having said that, I am an originalist and textualist. For me, the appropriate version of that is an original public meaning originalist and textualist. Although there are some nuances between the two, as a general matter, they're two sides of the same coin—originalism being a methodology with respect to interpretation of the Constitution, and textualism being a methodology with respect to the interpretation of statutes or regulations. The justification for originalism/textualism comes from three features of the Constitution: one is separation of powers, one is Bicameralism and Presentment, and one is the Procedural Due Process protections in the Fifth and Fourteenth Amendments. All of those features get at the same point, which is that the only authority a judge has and has been given by the Constitution is to interpret the law as written—not to rewrite the law and not to make new law, either intentionally (because it aligns with his or her policy preferences) or unintentionally. And originalism and textualism are the best methods I have found to ensure judges are interpreting the law as written.

8. 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 faced with a case concerning whether a particular right is fundamental and thus subject to heightened scrutiny under the Supreme Court's substantive due process doctrine, I would first faithfully apply all applicable precedents from the Supreme Court and the Eighth Circuit regarding whether the asserted right is so protected. In the absence of any on-point precedent, I would faithfully determine whether the specific the asserted-right is "deeply rooted in history and tradition[,] and . . . is essential to our nation's scheme of ordered liberty." *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 237 (2022) (citing *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997)).

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: Please see my response to Question 8. I would consider and evaluate all sources that any party cited so long as doing so was consistent with applicable Supreme Court and Eighth Circuit precedent. A few non-exhaustive examples of potentially relevant sources are: (1) state constitutional provisions enacted around the time of our country's founding, (2) state laws enacted around the time of the country's founding, (3) a consensus of state common law, or federal common law, from around the time of the country's founding. With respect to whether sources that arose well after the founding, but before or around the time of the Fourteenth Amendment, that is an open question on which either there is pending litigation or there could be future litigation that might come before me. Either way, it would be inappropriate for me to comment other than to say that I would faithfully apply Supreme Court and Eighth Circuit precedent on this question.

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

Response: Yes. With respect to vertical *stare decisis*, I am bound by on-point precedents of the Supreme Court and the Eighth Circuit. Were I lucky enough to be confirmed to the Eighth Circuit, I would be bound by on-point precedents of the Supreme Court. Precedents from other courts of appeals would not be binding, but I would certainly consider them.

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: Please see my response to Question 8.b.

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

Response: In the Eighth Circuit, a three-judge panel is not authorized to overturn precedent from a prior three-judge panel unless that precedent has been "cast into doubt by a decision of the Supreme Court." *Patterson v. Tenet Healthcare, Inc.*, 113 F.3d 832, 838 (8th Cir. 1997). With respect to the power of the Eighth Circuit sitting *en banc*, the Eighth Circuit has said that overturning circuit precedent "is appropriate when the precedent is 'erroneous' and 'perpetuates unwarranted disuniformity in the law.'" *S.A.A. v. Geisler*, 127 F.4th 1133, 1136 (8th Cir. 2025) (en banc) (citation omitted); *see generally* Fed. R. App. P. 40(b)(2).

10. Under 28 U.S.C. § 455, "[a]ny justice, judge, or magistrate judge of the United States shall disqualify [themself] in any proceeding in which [their] impartiality might reasonably be questioned." As a general matter, what criteria would you use when deciding whether to recuse yourself from a case?

Response: 28 U.S.C. § 455 and the Code of Conduct for United States Judges sets forth numerous specific situations in which a judge should recuse. When deciding a recusal issue, the first thing I would do is figure out whether one of those specific situations applied. If none of the specific situations applied, I would still consider whether my "impartiality might reasonably be questioned." *Id.* In the Eighth Circuit, "[t]he test for disqualification or recusal is an objective one and asks whether, from the perspective of 'the average person on the street,' a reasonable man knowing all of the circumstances 'would harbor doubts about the judge's impartiality.'" *Tyler v. Purkett*, 413 F.3d 696, 704 (8th Cir. 2005).

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: Your hypothetical question brings up a number of questions that could come before me as a federal district court judge or on the Eighth Circuit if I were lucky enough to be confirmed. Those questions include whether Take Care Clause claims against the President are constitutionally justiciable, whether the claims arise in a circumstance where a party has a right of action to pursue them, and what remedies would be appropriate in a properly brought case where a violation of the Clause was found. On each of these questions, the first thing I would do is consider the parties' arguments and any binding or persuasive precedent to which the parties pointed. As a general matter, if I reached the remedies question and determined that a remedy was called for, I would look at prior remedies case law (including remedies available by statute and common law) to see if I could find an historically-analogous situation and borrow the remedy used in that situation.

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: Donald Trump was certified as the winner of the electoral college vote in both the 2016 and 2024 presidential elections. This certainly suggests that he has been elected President twice as that term is used in the 22nd Amendment.

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: Donald Trump was certified as the winner of the electoral college vote in both the 2016 and 2024 presidential elections. This certainly suggests that he has been elected President twice as that term is used in the 22nd Amendment. It similarly suggests that, if he were certified as the winner of the electoral college in 2028, he would have been elected President three times as that term is used in the 22nd Amendment.

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

Response: Under the plain language of the 22nd Amendment, President Trump may not be elected to a third term.

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: Under our Constitution, when Congress certifies an individual as the winner of the electoral college vote, that individual becomes the President of the United States upon being sworn into that office on January 20 or (when applicable) January 21.

14. 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: No.

b. Do you think that judges ruling against President Trump's desired outcome should be "crack[ed] down on"?

Response: I have never said anything like this. I do not know what President Trump meant by the phrase "crack[] down on rogue judges." As a sitting federal judge and judicial nominee, I am not going to comment on what are clearly political statements made by the President of the United States. That would veer into the type of political activity that the Code of Conduct for United States Judges instructs judges to refrain from engaging in.

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: Yes.

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

Response: I have never said anything like this. I do not know what the President meant by his statement. Regardless, as a sitting federal judge and judicial nominee, I am not going to comment on whether Congress should pass, and the President should sign, a particular piece of legislation. That would veer into the type of political activity that the Code of Conduct for United States Judges instructs judges to refrain from engaging in.

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

Response: I can't speculate as to the reaction another judge might have. What I can tell you is that statements like the one you describe above have not had any affect on the way I rule on cases as the district court, and they would not have any affect on the way I would rule at the Eighth Circuit were I lucky enough to be confirmed. Judges decide cases all the time knowing that disappointed litigants, lawyers, members of the press, and members of the public might say harsh things about them and their rulings. The rule of law depends in part on judges not being affected in their adjudicative duties by such criticisms.

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: No.

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

Response: Please see my response to Question 14.b.

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

Response: As I stated in my confirmation hearing, I condemn in the strongest possible terms the violence and lawlessness of January 6, 2021. It would be inappropriate for me to offer a legal opinion on whether the events constitute an insurrection.

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

Response: Please see my response to Question 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: As a sitting federal judge, and outside the context of a case implicating the pardon/clemency power, it would be inappropriate for me to tell the President of the United States how and when he can, can't, should, or shouldn't use the pardon/clemency power. That

would veer into political activity that the Code of Conduct for United States Judges instructs judges to refrain from engaging in.

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 response 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 raises issues that are currently subject to litigation and political dispute. The Code of Conduct for United States Judges instructs judges to refrain from engaging with this type of question under the circumstances I have set out.

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

Response: The Supreme Court has made clear that there is a constitutional right to freedom of travel throughout the United States.

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

Response: The first thing I would do is consider the parties' arguments and any binding or persuasive precedent to which the parties pointed. As a general matter, I would also look to *United States v. Guest*, 383 U.S. 745, 758-59 (1966), and the earlier Supreme Court cases cited therein, to point me in the right direction with respect to determining the basis for the constitutional right to travel and whether that right has historically been subject to any exceptions for particular kinds of state restrictions on interstate travel.

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

Response: The Supreme Court has made clear there is a constitutional right to privacy that applies in certain specific contexts. I will faithfully apply all Supreme Court precedents concerning a constitutional right to 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 made clear that there is a right to use contraceptives. *See, e.g.*, *Griswold v. Connecticut*, 381 U.S. 479 (1965). As a district court judge (and an Eighth Circuit judge if I am lucky enough to be confirmed), I would faithfully apply *Griswold*, just like I would faithfully apply all binding precedent.

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

Response: Yes, the Supreme Court has said so in *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

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

Response: As a district court judge, I am bound to faithfully apply all on-point precedents of the Supreme Court and the Eighth Circuit with respect to the meaning and application of a particular constitutional provision. Were I lucky enough to be confirmed to the Eighth Circuit, I would be similarly bound by on-point Supreme Court precedent. With respect to original public meaning originalism as an academic matter, the words of a constitutional provision should be interpreted by what they would have meant to a reasonable ordinary person at the time of enactment. The meaning of the words of the constitutional provision do not change over time. Instead, as new factual situations arise over the decades or centuries, judges have to decide whether those new factual situations fall within or without the constant meaning of a constitutional provision.

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: Where the question involves the original public meaning of constitutional provisions dating back to the ratification of the Constitution, a non-exhaustive list of sources include the notes of the Constitutional Convention, the Federalist Papers, the Anti-Federalist Papers, the Ratification Debates, founding-era dictionaries, founding-era ordinary language corpora, founding-era federal case law, founding-era interpretations of parallel state constitutional provisions, founding-era statutes, and the like.

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

Response: As a general matter, courts are bound to faithfully follow legal texts (*e.g.*, constitutional provisions, statutes, and regulations) even if they don't like the practical consequences. But there are times where practical consequences matter. For example, when a judge sentences a defendant, he is directed by statute to consider, *inter alia*, how his sentence will (or will not) practically afford deterrence to criminal activity and will (or will not) protect

the public. *See* 18 U.S.C § 3553. For a second example, the Supreme Court has said that a truly ambiguous word or phrase in a statute should not be interpreted in a way that would lead to an absurd result. *See, e.g.*, *United States v. Kirby*, 74 U.S. 482, 486 (1868). For a third example, before a court grants a preliminary injunction, it must consider the real-world consequences of granting the injunction and the real-world consequences of denying the injunction. *See Winter v. Nat. Res. Def. Council*, *Inc.*, 555 U.S. 7, 20 (2008).

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

Response: While a judge should dispassionately, impartially, and fairly apply the law regardless of whether he or she likes the outcome, empathy is very important to the judicial role in a number of ways. Good judges work hard to understand the position and motivation of people in the judicial process. This helps in assessing credibility of witnesses, understanding specific testimony, determining fair sentences for convicted defendants, dealing with counsel, and making everyone feel respected and listened to in court.

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

Response: A judge must set aside his or her personal life experiences and dispassionately, impartially, and fairly interpret and apply the law. In terms of life experience helping a person gain empathy, please see my answer to Question 24.

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

Response: I am not going to prejudge what I would do in the circumstances you reference, especially because my response would be highly dependent on the context of the Order at issue, the defiance involved, and the justification asserted. I will note that judicial enforcement powers include, but are not limited to, imposition of sanctions, initiation of contempt proceedings, dismissal of an appeal, referral to an appropriate bar authority, and removal from the court bar. Were I lucky enough to be confirmed to the Eighth Circuit, and if I found myself in the circumstances you describe, I would engage with my colleagues on the relevant panel (or court-wide) to determine an appropriate response. As a general matter, parties to a proceeding must follow court orders and, if they disagree with such orders, the proper way to obtain relief is to seek review of the order in a higher court. But both the Supreme Court and legal scholars have suggested the existence of rare circumstances that might make it appropriate for litigants to disobey court orders. *See Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 111 (2009); William Baude, *The Judgment Power*, 96 Geo. L.J. 1807 (2008); Gary Lawson & Christopher D. Moore, *The Executive Power of Constitutional Interpretation*, 81 Iowa L. Rev. 1267, 1326 (1996); 17 Corpus Juris Secundum Contempt §§ 56-65.

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

Response: Please see my response to Question 9.

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

Response: To the extent I am proud about something in my career, it is my service to the people of Arkansas and to the people of the United States. I am incredibly proud to be an Arkansan and an American, and I consider myself incredibly blessed to be able to use the skills God has given me to contribute even a little bit to our American experiment.

29. Discuss your hiring process for law clerks.

Response: To hire law clerks, I evaluate the applications that are sent to my chambers based on writing skills, research skills, understanding of the law, ability to work under pressure, and ability to work on a small team. If an application seems promising under those criteria, I have each of my law clerks do a separate interview with the applicant. After the interviews, the clerks and I discuss the applicant's answers and whether that applicant should advance to a final interview with me. I generally interview 2-4 people for each open clerkship spot. I intend to continue hiring clerks in this way if I am lucky enough to be confirmed to the Eighth Circuit.

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

Response: As a sitting federal judge and judicial nominee, I am not going to comment on specific policy proposals or legislation. That would veer into the type of political activity that the Code of Conduct for United States Judges instructs judges to refrain from engaging in. That said, I do believe that judges should refrain from any conduct that would violate Title VII (whether Title VII protections are extended to law clerks or not).

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: Every time a new staff member—whether law clerk or otherwise—joins my chambers, I have a group meeting where, among other things, I explain the expectations of professionalism and respect I have for everyone in chambers. This includes, but is not limited to, telling my staff that harassment and discrimination will not be tolerated. I also make it a point to emphasize that the general rule of confidentiality concerning chamber's business does not apply to situations of discrimination or harassment. I explain that, if such harassment or discrimination occurs, the person affected can come to me or go straight to the HR professional in our Clerk's office or to the Chief Judge. I also ensure that everyone who joins my chambers gets our court-mandated anti-discrimination and

anti-harassment training. I will continue these practices for the rest of my time as a federal judge, whether on the district court or on the Eighth Circuit if I were lucky enough to be confirmed.

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

Response: Please see my response to Question 30.a.

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

Response: It depends on the severity of the conduct alleged. Depending on the level of severity, my potential responses would include speaking to the judge alleged to have acted inappropriately, speaking to the HR professional on the Eighth Circuit staff, reporting the alleged conduct to the Chief Judge of the Eighth Circuit, seeking advice from the appropriate persons in the Administrative Office of the Courts, and/or contacting law enforcement.

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

Response: Please see my responses to Questions 15 and 15.a.

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

Response: Please see my responses to Questions 15 and 15.a.

32. In *Arkansas State Conference NAACP v. Arkansas Board of Apportionment*, civil rights groups challenged Arkansas's 2021 state legislative redistricting plan under Section 2 of the *Voting Rights Act*. No party questioned whether private plaintiffs could sue under Section 2, but you raised the issue on your own—because it was a "jurisdictional" issue—and dismissed the case in a February 2022 opinion. The Eighth Circuit affirmed the dismissal but held that the district court "had jurisdiction all along." Responding to the plaintiffs' argument that you should not have raised the issue on your own, the Eighth Circuit said: "They have a point," though it declined to remand.

a. Do you agree with the Eighth Circuit's conclusion that you "had jurisdiction all along"?

Response: In *Cross v. Fox*, the Eighth Circuit affirmed dismissal of a claim because "the ICRA does not contain a private right of action to seek injunctive or declaratory relief in

federal court, and therefore, the district court lacked subject-matter jurisdiction under 28 U.S.C. § 1331." 23 F.4th 797, 802 (8th Cir. 2022). The Court specifically held that "[a]bsent a private right of action to enforce the ICRA in federal court for the relief sought, there can be no jurisdiction under 28 U.S.C. § 1331." *Id.* at 803. As I explained in *Arkansas State Conference NAACP v. Arkansas Board of Apportionment*, I concluded that *Cross v. Fox* bound me to treat the private right of action issue as one of jurisdiction. I acknowledged that doing so was in tension with Supreme Court cases decided earlier than *Fox*, but explained that this was a tension only the Eighth Circuit or the Supreme Court had the power to resolve. With respect to the Eighth Circuit's conclusion regarding whether district court had jurisdiction "all along," it would be inappropriate for me to evaluate that conclusion.

b. Before your February 2022 ruling, had any federal court held that private plaintiffs may not sue under Section 2? If so, please identify each.

Response: To the best of my knowledge, no. As explained in my Order, however, neither the Supreme Court nor the Eighth Circuit had affirmatively held that there was a private right of action to sue under Section 2 of the Voting Rights Act. There was certainly *dicta* and assumptions to that effect, but no holdings. *See, e.g.*, *Brnovich v. Democratic National Committee*, 594 U.S. 647, 690 (2021) (Gorsuch, J., concurring) (explaining that courts, including the Supreme Court, had long "assumed—without deciding—that the Voting Rights Act of 1965 furnishe[d] an implied cause of action under § 2").

c. When is it appropriate for federal judges to dismiss cases based on legal conclusions for which neither party has advocated?

Response: There are a number of instances where it is appropriate (and often required) for federal judges to dismiss a case based on "legal conclusions for which neither party has advocated." The most notable example is where subject matter jurisdiction is absent in a particular case. *See, e.g.*, *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006) (explaining that federal courts "have an independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party"). Another example is where a party moves for a default judgment, but the party's Complaint fails to state a viable cause of action. *See, e.g.*, *Marshall v. Baggett*, 616 F.3d 849, 852-53 (8th Cir. 2010). A third example is that a judge is required to screen prisoner/IFP complaints and dismiss those that are frivolous or fail to state a viable claim. *See* 28 U.S.C. § 1915(e). It is worth noting that, even in cases where a court either may or has to act *sua sponte*, the best practice is to alert the parties in the case to the Court's legal concern and give the parties an opportunity to substantively address the legal question raised by the Court.

33. At your hearing, when Senator Blumenthal asked who won the popular vote in the 2020 election, you declined to answer, stating, "I don't think, as a sitting judge, this is an issue for me to get into . . . this feels like a very political and policy-related issue."

a. On May 28, 2025, while serving as a U.S. District Court judge, you co-authored an article in *The Dispatch* titled "Make Sarah and Yaron's Memory a Blessing," following the murder of Sarah Milgrim and Yaron Lischinsky outside of the Capital Jewish Museum in Washington, D.C. days earlier. In it, you and your co-authors wrote that the Free Palestine movement "sustains itself—intentionally—on the glorification of violence against Jews."

How do you differentiate your comments in *The Dispatch* about a "political and policy-related issue"—Israel's military actions in Gaza—from your refusal to answer questions about who won the 2020 presidential election?

Response: The Code of Conduct for United States Judges requires judges to refrain from "political activity." The article I co-authored decried calls for violence against Jews and the actual violence that has resulted. To suggest that this constitutes "political activity" is to water-down the term until it is meaningless. The prohibition on political activity is not a prohibition on judges speaking or writing on every issue that is somehow tangentially related to societal issues.

b. If confirmed, would you recuse yourself from cases involving individuals or organizations associated with the Free Palestine movement? If not, why not?

Response: Recusal decisions are intensely fact-bound decisions. In every case where a party raises a recusal question, or where I believe recusal is potentially justified, I would consult and apply the standards set forth in 28 U.S.C. § 455, the Code of Conduct for United States Judges, and any other legal authorities that apply to a particular recusal issue. As a sitting federal district court judge and a judicial nominee to the Eighth Circuit—who will have to decide real recusal issues in the future regardless of whether I am lucky enough to be confirmed—prejudging such questions would be inappropriate.

34. On November 7, 2023, you emailed five law students who had accepted future clerkships or internships in your chambers. You asked each of them to confirm that neither they nor any organization they still belonged to had done anything that could be construed as "celebrating or condoning the 10/7 massacre perpetrated by Hamas in Israel." You told Reuters that you planned to ask similar questions when hiring clerks in the future.

a. Since November 2023, have you asked clerkship or internship applicants similar questions? If so, what did you ask, and at what stage of hiring?

Response: To hire law clerks, I evaluate the applications that are sent to my chambers based on writing skills, research skills, understanding of the law, ability to work under pressure, and ability to work on a small team. If an application seems promising under those criteria, I have each of my law clerks do a separate interview with the applicant. One interview is more legally substantive, while the other interview is more about "soft-skills." After the interviews, the clerks and I discuss the applicant's answers and whether that applicant should advance to a final interview with me. I generally interview 2-4 people for each open clerkship spot. I intend to continue hiring clerks in this way if I am

lucky enough to be confirmed to the Eighth Circuit. During the soft-skills interview, my clerk is directed to ask, among other things, 19 questions. One of those questions is: "Have you or an organization of which you are a current member done anything that could be construed as: (1) celebrating or condoning the 10/7 massacre perpetrated by Hamas in Israel; (2) engaging in acts of Antisemitism or Islamophobia; (3) advocating for the intentional targeting of civilians by Hamas or Israel; or (4) ripping down pictures of the hostages taken by Hamas on 10/7."

b. Has an applicant's answer, or a statement by an organization the applicant belonged to, affected any hiring decision? If so, describe each instance without identifying the applicant.

Response: No. I have never had any applicant say "yes" to the question I set out in my response immediately above. If an applicant said "yes" to this question, I would inquire further as to what the applicant or the applicant's organization had specifically done, and I would evaluate whether that conduct suggests that the applicant lacks the judgment, respect, or integrity that is necessary in my view to be a law clerk.

Questions for the Record for Judge Lee Philip Rudofsky
Submitted by Senator Richard Blumenthal
October 7, 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: 28 U.S.C. § 455 requires, *inter alia*, that a judge recuse from "any proceeding in which his impartiality might reasonably be questioned." With respect to appearances of impropriety, this is the primary standard I would use to determine the appropriateness of my recusal in any particular proceeding. I would of course also consult and apply the Code of Conduct for United States Judges, as well as any other legal authorities that apply to a particular recusal issue. As a general matter, and assuming your hypothesized reasonable person's questioning of my impartiality was objectively reasonable, the answer to your question is yes.

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: Recusal decisions are intensely fact-bound decisions. In every case where a party raises a recusal question, or where I believe recusal is potentially justified, I would consult and apply the standards set forth in 28 U.S.C. § 455, the Code of Conduct for United States Judges, and any other legal authorities that apply to a particular recusal issue. As a sitting federal district court judge and a judicial nominee to the Eighth Circuit—who will have to decide real fact-bound recusal issues in the future regardless of whether I am lucky enough to be confirmed—prejudging such questions in response to broad hypotheticals would be inappropriate.

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: As context for my answer, it is important to say that I have now been on the federal bench for seven years and so it has been a significant amount of time since I have represented clients or was employed by a law firm, government entity (except as an adjunct professor), or private business. To the extent your question asks about recusing from cases merely because a party or litigant is a former client, law firm, or organization with which I worked at some point in the past, please see my response to Question 1.a. Consistent with the authorities referenced in that response, I can say that I will for certain continue to recuse myself from all cases on which I worked before coming to the bench.

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 response to Question 1.a.

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: Canon 3(a)(4) in the Code of Conduct for United States Judges is the primary guide for judges with respect to *ex parte* communications. I currently do and will continue to adhere to it. I will, of course, also adhere to all other parts of the Code of Conduct and any other laws and ethical rules that might apply to a particular situation concerning communications (whether *ex parte* or not) about pending cases, judicial business, and issues that could reasonably be expected to come before my court.

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

Response: Please see my response to Question 2.

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

Response: Please see my response to Question 2.

f. 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: Please see my response to Question 2.

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.

g. 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: I do and will continue to faithfully follow the Code of Conduct for United States Judges and all relevant laws, regulations, and ethical rules with respect to gifts.

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

Response: I do and will continue to faithfully follow the Code of Conduct for United States Judges and all relevant laws, regulations, and ethical rules with respect to privately funded travel, hospitality, and entertainment.

i. 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: I do and will continue to faithfully follow the Code of Conduct for United States Judges and all relevant laws, regulations, and ethical rules with respect to teaching, speaking, and writing activities.

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: Yes, the Supreme Court has made this clear.

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

Response: The Supreme Court has described the contempt power as essential to the administration of justice and has noted that federal courts have found the power necessary to the exercise of all other judicial powers. But the Court has also made clear that the power must be exercised very delicately. 18 U.S.C. § 401 provides that a court "shall have power to punish . . . [d]isobedience or resistance to its lawful writ, process, order, rule, decree, or command." The Federal Rules contain sections governing a judge's use of the contempt power, including but not limited to Federal Rule of Criminal Procedure 42 and Federal Rule of Civil Procedure 37. Were a contempt-power question to come before me, I would faithfully apply any applicable Supreme Court precedent, any applicable constitutional provisions, any applicable statutes, and any applicable rules of procedure to the question. If you are asking whether Congress should try to limit such authority, that feels like a political or policy question that would be inappropriate for a sitting federal judge to comment on. If you are asking whether Congress can constitutionally limit such authority in whole or part, that is a question that might at some point come before me and would be inappropriate for me to prejudge.

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, either individually (where an individual circuit judge is authorized by his court to act alone) or collectively (in the more normal course of things).

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

Response: Please see my response to Question 5a.

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

Response: Depending on the particular order to be enforced and the factual circumstances of the case, enforcement powers would include, but not be limited to, imposition of sanctions, initiation of contempt proceedings, dismissal of an appeal, referral to an appropriate bar authority, and removal from the court bar.

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: I can easily foresee various iterations of this question coming before me, either now on the federal district court or on the Eighth Circuit if I am lucky enough to be confirmed. It would thus be inappropriate for me to prejudge the universe of potential defenses to defiance of a federal court order. What I can say is that, as a general matter, parties to a proceeding (including all government entities and officials) must follow court orders and, if they disagree with such orders, the proper way to obtain relief is to seek review of the order in a higher court. But both the Supreme Court and legal scholars have suggested the existence of rare circumstances that might make it appropriate for litigants to disobey court orders. *See Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 111 (2009); William Baude, *The Judgment Power*, 96 Geo. L.J. 1807 (2008); Gary Lawson & Christopher D. Moore, *The Executive Power of Constitutional Interpretation*, 81 Iowa L. Rev. 1267, 1326 (1996); 17 Corpus Juris Secundum Contempt §§ 56-65.

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

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

d. What would make a court order unlawful?

Response: The most obvious example of an unlawful court order is an order entered in the clear absence of all jurisdiction.

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

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

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

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

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

Response: No.

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

Response: No.

7. As Arkansas Attorney General, you supervised a litigation strategy that often opposed LGBTQ+ rights. In one case, you challenged a city ordinance which prohibited discrimination based on sexual orientation or gender identity. In another instance, you defended limiting the rights of same-sex parents seeking presumptive paternity rights, arguing that the right to civil marriage does not equate to a categorical parental relationship to same-sex spouses' biological children that were born while married.

If confirmed, how can future litigants trust that you will remain unbiased on issues of LGBTQ+ rights?

Response: I was not the Attorney General of Arkansas. I worked for the Attorney General of Arkansas as the Solicitor General of Arkansas. Like all litigators, my job as Solicitor General was to advocate as zealously as possible for the position of my client within the bounds of professional responsibility. In the cases you reference, that meant defending the applicable state statutes to the best of my professional abilities. It would be unreasonable for future lawyers and litigants to confuse my then-required zealous advocacy on behalf of clients with my current (and future) responsibilities of fairly, impartially, and dispassionately applying the law as it is written and binding precedent from the Supreme Court and Eighth Circuit. I take my judicial duty of fairness, impartiality, and dispassion incredibly seriously, have done so every day since taking the bench 7 years ago, and will continue to do so for as long as I am blessed to be a federal judge.

Senator Mazie K. Hirono
Senate Judiciary Committee

Nomination Hearing
Questions for the Record for Judge Lee Rudofsky

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

a. **Since you became a legal adult, have you ever made unwanted requests for sexual favors, or committed any verbal or physical harassment or assault of a sexual nature?**

Response: No.

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

Response: No.

2. After Federal District Judge James Boasberg temporarily blocked the Trump Administration's deportation policies, specifically the administration's use of an 18th century law to deport Venezuelan migrants, President Trump demanded that the Judge be impeached, writing in a Truth Social post, "This judge, like many of the Crooked Judges' [sic] I am forced to appear before, should be IMPEACHED!!!" Truth Social, March 18, 2026. Chief Justice John Roberts made a statement in reply: "For more than two centuries it has been established that impeachment is not an appropriate response to disagreement concerning a judicial decision. The normal appellate review process exists for that purpose." **Do you agree that impeachment is not an appropriate response to disagreement concerning a judicial decision?**

Response: As a sitting federal district court judge and nominee to the Eighth Circuit, I believe it would be inappropriate for me to suggest to the Congress whether, when, and how it should or should not exercise its power to impeach federal judges. That would wade deep into the type of political and policy questions that the Code of Conduct for United States Judges requires me to refrain from engaging on.

3. You previously served as Co-Chair of the Arkansas Bar Association's Commission on Diversity and Inclusion. According to its website, the Commission "addresses the opportunities and challenges for encouraging and increasing diversity within the Association [and] within the legal profession."

a. **Do you agree with that mission?**

Response: I served in the role your question references from 2016 to 2017. I do not know when the description of the Committee you quote was written, but I did not write it or know about it when I was on the Committee. I do not recollect a lot about my work

for the Committee. To the best of my recollection, my work was limited to helping arrange for a panel of speakers—on the topic of diversity and the law—at an annual bar conference. I am certainly in favor of bar organizations discussing all sorts of topics—especially with panels of speakers of divergent views—and this would include discussing the issue of diversity in the law. To the extent your question asks for my specific thoughts on the propriety of specific attempts to encourage or increase diversity in the bar, I believe the question seeks my political or policy views and also touches on issues that could come before me as a district court judge or (if I am lucky enough to be confirmed) as an Eighth Circuit judge. The Code of Conduct for United States Judges thus requires me to abstain from commenting on such things. I can, however, say the following as a general matter. With respect to entry into law school and the legal profession, and with respect to work as a lawyer, no person should be discriminated against on the basis of a protected characteristic. And I believe that as long as everyone has an equal opportunity to succeed based on merit, we will have a bar filled with people from different professional and personal backgrounds.

b. **How did you work towards that goal while serving on the diversity commission?**

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

4. **When you issue an order as a district court judge, do you expect all parties in the case to follow that order?**

Response: Yes. As a general matter, parties to a proceeding (including all government entities and officials) must follow court orders and, if they disagree with such orders, the proper way to obtain relief is to seek review of the order in a higher court. But both the Supreme Court and legal scholars have suggested the existence of rare circumstances that might make it appropriate for litigants to disobey court orders. *See Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 111 (2009); William Baude, *The Judgment Power*, 96 Geo. L.J. 1807 (2008); Gary Lawson & Christopher D. Moore, *The Executive Power of Constitutional Interpretation*, 81 Iowa L. Rev. 1267, 1326 (1996); 17 Corpus Juris Secundum Contempt §§ 56-65. I can easily foresee iterations of this rare-circumstance question coming before me, either now or on the Eighth Circuit if I am lucky enough to be confirmed. It would thus be inappropriate for me to prejudge the universe of potential defenses to defiance of a federal court order.

5. **Would you expect the same as a circuit court judge?**

Response: Please see my response to Question 4.

6. **Would you expect the President of the United States to follow a court order?**

Response: Please see my response to Question 4.

7. The Code of Conduct for United States Judges and related federal ethics rules bar federal judges from engaging in partisan politics. You previously worked on the political campaigns of

Mitt Romney, John McCain, and others. You were also a member of the Benton County Republican Committee from 2014-2015, the Arkansas Republican Party from 2014-2019, the Little Rock Center-Right Attorneys Lunch Group from 2015-2019, and the Republican National Lawyers Association from 2004-2019. **If confirmed, how will you ensure that your personal politics will not influence your judicial decisions?**

Response: I have been a sitting federal district court judge since 2019. My personal politics and policy preferences have never and will never influence my judicial decision-making. My role now and my role in the future (if lucky enough to be confirmed) both require faithful, fair, and dispassionate adherence to binding precedent and, in the absence of binding precedent, faithful, fair, and dispassionate adherence to whatever legal text I am interpreting. By ensuring my legal interpretations are based on the ordinary public meaning of the language of the legal text at the time of its enactment, I am also ensuring my personal politics and political preferences play no role in the outcome of a case.

8. **Can you describe a case you ruled on as a district court judge in which you reached a result you personally disagreed with or went against your personal views because the law required it?**

Response: In *Arkansas State Conference NAACP v. Arkansas Board of Apportionment*, 586 F. Supp. 3d. 893 (E.D. Ark 2022), I held that Congress did not provide a private right of action to enforce Section 2 of the Voting Rights Act. I did so despite my policy preference—stated in the opinion itself—that there should be a private right of action to enforce Section 2 of the Voting Rights Act. *See id*. at 905.

9. In *Equal Employment Opportunity Commission v. Kroger Ltd. Partnership*, 608 F.Supp. 3d 757 (E.D. Ark. 2022), you held that an employee could not be terminated for refusing to wear a company apron with a multicolored heart symbol that some employees believed expressed support for the LGBTQ community. The symbol had four concentric hearts (navy blue, yellow, red, and light blue) and was developed by the company to represent its "our promise" campaign: everyone friendly and caring, everything fresh, uplift in every way, and improve every day. However, the employees believed the heart represented support of homosexuality, which they believed to be a sin. You held that an employee's sincere belief that a company rule burdens their exercise of religion is not subject to an objective reasonableness test and that a company must instead show real disruption or real potential for disruption to refuse to accommodate a sincere religious belief.

a. **How do courts balance a sincere religious belief with sex discrimination prohibitions?**

Response: I am not going to comment on the preamble to this question—which provides your characterization of the *Kroger* case—because it is not necessary to do so to answer the question you ask in Question 9.a. As far as the question you ask, and with the understanding that we are not talking about the *Kroger* case or any other specific case, I believe I can answer without running afoul of the Code of Conduct for United States Judges. As your question suggests, there are times when government prohibitions on sex

discrimination come into tension with an individual or entity's sincerely held religious beliefs and therefore implicate (or at the very least potentially implicate) the First Amendment's Free Exercise Clause. In such cases, the first question is whether the sex-discrimination prohibition at issue burdens the individual's or entity's religious exercise. If it does, the next question is whether the prohibition is neutral and generally applicable. If it is, the prohibition is subject only to rational-basis-review. If it is not, the prohibition is subject to strict scrutiny. The most on-point precedents of the Supreme Court—and the cases to which lower courts would turn first—are *Fulton v. City of Philadelphia*, 593 U.S. 522 (2021), and *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 584 U.S. 617 (2018).

Out of an abundance of caution, I note that I may be misunderstanding your question, and instead your question may concern when a private company may lawfully refuse to accommodate an employee's sincerely held religious beliefs because the employer thinks the employees' beliefs are discriminatory or that the necessary accommodation would be tantamount to sex discrimination. As a general matter, and again not with reference to any specific case, courts would look to cases like *Groff v. DeJoy*, 600 U.S. 447 (2023), and the cases cited therein, for the test governing whether and when an employer must accommodate an employee's sincere religious belief. I don't think it would be appropriate for me to comment more specifically than this because such cases are very likely to come before me in the future (either on the district court or, if I am lucky enough to be confirmed, on the Eighth Circuit).

Nomination of Lee Philip Rudofsky
United States Court of Appeals for the Eighth Circuit
Questions for the Record
Submitted October 7, 2026

QUESTIONS FROM SENATOR BOOKER

1. Do you believe that the effect of a law matters when interpreting its text?

Response: As a general matter, courts are bound to faithfully follow legal texts (*e.g.*, constitutional provisions, statutes, and regulations) even if they don't like the practical consequences or effects of that text. But there are times where practical consequences or effects matter in judicial decisions. For example, when a judge sentences a defendant, he is directed by statute to consider, *inter alia*, how his sentence will (or will not) practically afford deterrence to criminal activity and will (or will not) protect the public. *See* 18 U.S.C § 3553. For a second example, the Supreme Court has said that a truly ambiguous word or phrase in a statute should not be interpreted in a way that would lead to an absurd result. *See, e.g.*, *United States v. Kirby*, 74 U.S. 482, 486 (1868). For a third example, before a court grants a preliminary injunction, it must consider the real-world consequences of granting the injunction and the real-world consequences of denying the injunction. *See Winter v. Nat. Res. Def. Council*, *Inc.*, 555 U.S. 7, 20 (2008).

2. In *McGhee v. Hutchinson*, death row inmates challenged Arkansas's lethal injection protocol as a violation of their Eighth Amendment rights. As Solicitor General of Arkansas, you argued that the drug cocktail had not been shown to cause "needless suffering."[1]

a. Do you stand by your position in this case?

Response: Like all litigators, my job as Solicitor General was to zealously advocate for the position of my client within the bounds of professional responsibility. In the case you reference, that meant defending Arkansas' lethal injection protocol to the best of my professional abilities. It would be unreasonable for anyone to confuse my then-required zealous advocacy on behalf of clients with my policy positions on any issue. It would also be unreasonable for anyone to confuse my then-required zealous advocacy on behalf of clients with my current (and future) responsibilities of fairly, impartially, and dispassionately applying the law as written and binding precedent from the Supreme Court and Eighth Circuit. I take my judicial duty of fairness, impartiality, and dispassion incredibly seriously, have done so every day since taking the bench seven years ago, and will continue to do so for as long as I am blessed to be a federal judge.

b. Define "needless suffering" in this context.

Response: According to recent Supreme Court cases, including *Buckley v. Precythe*, *Glossip v. Gross*, and *Baze v. Rees*, the test for "needless suffering" asks whether a particular method of execution is sure or very likely to cause suffering significantly over

[1] Opposition to Application for Stay of Executions, *McGhee v. Hutchinson*, No. 16-8770 (2017).

and above a feasible and readily implementable alternative method of execution that the state refuses to adopt without a legitimate penological reason. To the extent your question is asking whether I agree that the Supreme Court has correctly captured the concept of needless suffering in its test, it is not appropriate for me, as a sitting federal judge and a judicial nominee, to grade, or give a thumbs up or thumbs down to, Supreme Court precedent. I will faithfully apply the Supreme Court precedent in this area.

c. Last week, the State of Tennessee attempted to execute Christa Pike by administering two doses of pentobarbital. The lethal injections failed to kill her and left her unconscious on and on a ventilator. The governor of Tennessee has halted all other executions while the State conducts a third-party review. Does this change your position? Why or why not?

Response: To the extent you're asking me my personal view on the death penalty, or to comment on a current event related to the death penalty, that veers into the type of political activity that the Code of Conduct for United States Judges instructs judges to refrain from engaging in. To the extent you are asking me for my current view on whether the Supreme Court's "needless suffering" case law is correct or incorrect, please see my response to Question 2.b.

3. As the Solicitor General of Arkansas, in 2018, you filed an amicus brief arguing that the University of Arkansas was immune from litigation relating to allegations of sex discrimination in response to the university's actions following the report of a campus sexual assault.[2]

a. Do you stand by your position in this case?

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

b. If, as you advocated, state educational institutions such as the University of Arkansas are immune from suit in federal court for alleged violations of title IX, what legal remedies could a student survivor of sexual assault pursue against a university that was deliberately indifferent to that survivor's sexual assault at the hands of another student?

Response: As a threshold matter, I note that the Eighth Circuit has made clear that the University of Arkansas is not immune from Title IX damages claims based on sex discrimination allegations—because it has waived sovereign immunity by accepting federal funds. *See generally Fryberger v. University of Arkansas*, 889 F.3d 471 (8th Cir. 2018). I will faithfully apply *Fryberger*, as I would all binding precedent. As to what other remedies might be available to a plaintiff in the hypothetical circumstances you note, it would be inappropriate for me to answer. I am a sitting federal district court judge as well as a nominee to the Eighth Circuit. The Code of Conduct for United States Judges instructs me not to give legal advice, except in certain limited circumstances to

[2] Brief of the States of Arkansas, Arizona, Kansas, Louisiana, Nebraska, South Carolina and Texas as Amici Curiae in Support of Appellants and in Support of Reversal, 2017 WL 526051, *Fryberger v. University of Arkansas*, 889 F.3d 471 (8th Cir. 2018).

members of my family. Moreover, I should not prejudge the propriety of any additional or alternative remedies that might be available to future litigants in this type of case.

c. Do you believe the nation's universities should be doing more to protect their students from sex discrimination and sexual assault? If so, what?

Response: As a dad to two amazing 10-year-old girls, I think I'm not violating any ethical precepts by saying that protecting women from sexual discrimination, harassment, and assault is critically important. As to what specific steps political actors or universities should be taking to achieve this goal, a sitting federal judge and judicial nominee should not comment. Whatever actions are taken by one or more of these actors could easily come before me in litigation. I must ensure that I do not say or do anything that could raise an appearance of impropriety and cause disqualification. I will also note that I do not know what specific steps particular universities are taking now to protect their students, so it is impossible for me to say whether one or more universities should be taking additional steps. I am sure, just as is true in every large enough group, some universities are doing a good job, some are doing okay, and some are doing a bad job at protecting their students.

4. What is the Unitary Executive Theory?

Response: At a very high level, the Unitary Executive Theory is premised on the idea that the Executive Branch is one cohesive branch whose members all ultimately report to, and act on behalf of, the President of the United States. According to this theory, because the President is the singular head of the Executive Branch, the President may control the discretionary acts of all members of the Executive Branch. That is, while acts of the Executive Branch officials must be constitutional and lawful, the President gets to decide how all Executive Branch officials carry out their constitutional and lawful functions. Although some aspects of the Unitary Executive Theory have been adopted by the Supreme Court in particular circumstances, the Court has never adopted that theory wholesale.

5. In 2022, as a U.S. District Judge in the Eastern District of Arkansas, you presided over *Arkansas State Conference NAACP v. Arkansas Board of Apportionment*, a lawsuit brought under §2 of the Voting Rights Act. The NAACP of Arkansas alleged that Arkansas's 2021 congressional map diluted the votes of Black residents, with the new map resulting in only 11 majority Black districts out of 100 total districts.

You did not rule on the merits of the case because you held the NAACP held no right of action to enforce §2 of the VRA. In your opinion, however, you wrote, "The question is not whether the Court believes the Voting Rights Act has been and continues to be a force for good and progress in our society. (I do.) … The question is not whether the Court believes cases like this one are important to pursue. (I do.)."[3]

[3] *Arkansas State Conf. NAACP v. Arkansas Bd. of Apportionment,* 586 F. Supp. 3d 893, 905 (E.D. Ark. 2022), *aff'd,* 86 F.4th 1204 (8th Cir. 2023). Available at https://www.documentcloud.org/documents/23593065-arkansas-state-conference-naacp-feb-17-2022-order-by-us-district-judge-lee-rudofsky/?mode=document.

Earlier this year, in *Louisiana v. Callais*, the Supreme Court dealt another blow to the Voting Rights Act of 1965, all but "render[ing] Section 2 all but a dead letter," as Justice Kagan observed.

a. Can you describe how the VRA has been a "force for good and progress in our society"? What specific outcomes do you believe show progress?

Response: As I said in my hearing in response to a question from Ranking Member Durbin, the Voting Rights Act was a seminal piece of legislation that, during a worse time in our history, helped to ensure the rights of everyone to vote, including minorities. Relatedly, the Supreme Court has said that the Voting Rights Act "has proved immensely successful at redressing racial discrimination and integrating the voting process." *See, e.g.*, *Shelby Cnty., Ala. v. Holder*, 570 U.S. 529, 548 (2013).

b. Do you think the VRA *can still be* a "force for good and progress in our society" after the *Callais* decision? How so?

Response: Your question essentially asks me to give a thumbs or thumbs down to, or to otherwise grade, a decision of the Supreme Court. As a sitting federal district court judge and a nominee to the Eighth Circuit, this would be inappropriate for me to do. I will note that, although *Callais* refined the *Gingles* test governing Section 2 cases, it did not eliminate Section 2 of the Voting Rights Act. Section 2 claims can still be brought so long as the *Callais* test is met.

c. How will plaintiffs fighting voter dilution be able to "pursue" such cases after *Callais*?

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

6. In 2020, you were listed as a member of the Arkansas Advisory Committee to the U.S. Commission on Civil Rights in a report titled "Mass Incarceration & Civil Rights in Arkansas." The report included a section titled "Racial Disparities" which outlined the disparities between the people of color that make up Arkansas's general population and the composition of the state's prison population.

a. To what do you attribute racial disparities in the prison population?

Response: I have not studied the issue sufficiently to have an opinion at this time.

b. As an appellate judge, you will review district court sentencing decisions. If a district judge explicitly factors in local systemic racial disparities to issue a below-Guidelines sentence for a non-violent offense, would you consider that a valid exercise of discretion or an abuse of law?

Response: I have not thought about this legal question. I don't believe I should prejudge the question without the benefit of an actual factual scenario and adversarial briefing by

real parties. To come to a conclusion, I would focus on dispassionately interpreting 18 U.S.C. § 3553(a) to determine whether Congress has authorized sentencing judges to take into account the factor that you reference.

c. Under 18 U.S.C. § 3553(a), a judge has broad discretion to depart or vary from the calculated Guidelines range based on the statutory sentencing factors and can consider the unique history and characteristics of the individual defendant. In your view, may a sentencing judge consider evidence of systemic racial disparities, for example, in policing, charging, or how criminal history is scored, when assessing a defendant's history and characteristics under § 3553(a)(1)? Please explain.

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

7. 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.

8. 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: In response to Question 14 of the Committee's Questionnaire, I set forth my current recusal practice and listed and explained the basis for my recusal in the 97 cases where I recused either *sua sponte* or at the request of a party. I also described the seven cases where I denied motions for recusal. I expect that my present recusal practices would continue if I am confirmed to the Eighth Circuit. Regardless, in every case where a party raises a recusal question, or where I believe recusal is potentially justified, I would consult and apply the standards set forth in 28 U.S.C. § 455, the Code of Conduct for United States Judges, and any other legal authorities that apply to a particular recusal issue.

9. If you are confirmed, how would you handle a request or directive 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: In the seven years I have been on the bench, I have never gotten a directive from anyone to decide a case in a certain way. I do not have any reason to think I would in the future ever be the recipient of directives or extra-legal requests from anyone, including the requests or directives you specifically describe, whether as a federal district court judge or on the Eighth Circuit were I lucky enough to be confirmed. If I were the recipient of such a directive or extra-legal request, it would fall on deaf ears and I would immediately end the interaction. If the request violated any applicable statutes, regulations, or ethical rules, I would take appropriate steps to report it to appropriate authorities. And of course, to the extent the request or directive constituted an *ex parte* communication, I would disclose it to the parties consistent with the Code of Conduct for United States Judges.

a. What ethical obligations govern your response to such a request or directive?

Response: Please see my response to Queston 9.

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

Response: My initial inclination is yes, but it is not question I have thought about deeply and it is not a question on which I have firm views. This is because, as I explained above, this scenario has not happened to me in seven years on the bench, and I have not heard of this happening to any other judge. I do not have any reason to think I would in the future ever be the recipient of directives or extra-legal requests from anyone, including the requests or directives you specifically describe, whether as a federal district court judge or on the Eighth Circuit were I lucky enough to be confirmed.

10. 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: I have not made any such statements. As a sitting federal judge, I am not going to characterize or comment on the statements that the President of the United States has made about specific judges or specific judicial decisions. That veers into the type of political activity that the Code of Conduct for United States Judges instructs judges to refrain from engaging in.

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

Response: No. I would continue deciding cases based on the law. Judges have to decide cases all the time knowing that disappointed litigants, lawyers, members of the press, and members of the public might say harsh things about them and their rulings. The rule of law depends in part on judges not being affected by such criticisms.

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 response to Question 10.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: As far as I can tell, a judge is not under an ethical obligation to affirmatively speak out in the situation you posit. There are certain very limited circumstances—which constitute an incredibly small and specific subset of the broader situation you posit—where a judge may choose to speak out in specific circumstances without violating the

applicable ethical rules. The commentary to Canon 4 of Code of Conduct for United States Judges states: "Within the boundaries of applicable law . . .[,] a judge may express opposition to the persecution of lawyers and judges anywhere in the world if the judge has ascertained after reasonable inquiry that the persecution is occasioned by conflict between the professional responsibilities of the persecuted judge or lawyer and the policies or practices of the relevant government." On the other hand, unless we are talking about real persecution, Canon 5 is clear that a judge "should not engage in any . . . political activity."

11. The Code of Conduct for United States Judges requires judges to avoid impropriety and the appearance of impropriety in all activities (Canon 2). The Code does not list the acts that would create an appearance of impropriety. Instead, the commentary to Canon 2A explains that the prohibition is "cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in the Code."[4]

a. How do you interpret the appearance-of-impropriety standard? Provide examples of conduct that are not per se improper but could create an appearance of impropriety that a judge should avoid.

Response: The commentary to Canon 2A states: "[a]n appearance of impropriety occurs when reasonable minds, with knowledge of all the relevant circumstances disclosed by a reasonable inquiry, would conclude that the judge's honesty, integrity, impartiality, temperament, or fitness to serve as a judge is impaired." One example would be a judge eating dinner with a party or party's lawyers the night before a hearing in a case over which the judge presides. If the dinner participants do not talk about the case and everyone pays for their own meal, the dinner is not *per se* improper. But it could easily meet the appearance of impropriety standard, and therefore judges should not do something like this.

12. Under 18 U.S.C. § 1001, knowingly and willfully making a materially false statement in a matter within the jurisdiction of the legislative branch is a federal crime punishable by up to five years in prison.

a. When this Committee evaluates a nominee for the federal bench, is any knowingly false statement made by that nominee to the Committee—even one that would not meet Section 1001's materiality requirement — probative of the nominee's fitness for a judgeship? Explain.

Response: I certainly do not think judges or nominees for judgeships should knowingly make false statements to the Committee. As to whether the Committee (or the Senate) should treat such a statement as probative of the nominee's fitness for a judgeship, that is a political question for the Committee (or the Senate) to decide. As a sitting federal district court judge and as a judicial nominee, I do not believe it is appropriate under the

[4] Code of Conduct for United States Judges, https://www.uscourts.gov/administration-policies/judiciary-policies/ethics-policies/code-conduct-united-states-judges.

Code of Conduct for United States Judges for me to suggest to the Committee what it should and shouldn't consider probative of a nominee's fitness for a judgeship.

b. When this Committee evaluates assessing the nomination of a political appointee, is any knowingly false statement made by that appointee to the Committee—even one that would not meet Section 1001's materiality requirement — probative of the nominee's fitness for executive service? Explain.

Response: I certainly do not think political appointees should knowingly make false statements to the Committee. As to whether the Committee (or the Senate) should treat such a statement as probative of the nominee's fitness for executive service, that is a political question for the Committee (or the Senate) to decide. As a sitting federal district court judge and as a judicial nominee, I do not believe it is appropriate under the Code of Conduct for United States Judges for me to suggest to the Committee what it should and shouldn't consider probative of a nominee's fitness for executive service.

13. If this Committee were to determine that a sitting federal judge knowingly provided false testimony to it, what process do you believe should follow, and what consequences would be appropriate?

Response: As a sitting federal district court judge and nominee to the Eighth Circuit, I believe it would be inappropriate for me to suggest to Congress whether, when, and how it should or should not exercise its various powers to address the situation you describe. That would wade deep into the type of political and policy questions that the Code of Conduct for United States Judges requires me to refrain from engaging on.

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

Response: Please see my response to Question 13.

15. How would you characterize your judicial philosophy?

Response: I am an originalist and a textualist. I have described these judicial philosophies in response to Chairman Grassley's questions at my confirmation hearing. I note, however, that as a federal district court judge I am bound by applicable precedent from the Eighth Circuit and the Supreme Court. Were I lucky enough to be confirmed to the Eighth Circuit, I would be similarly bound. I will faithfully and fully apply all applicable precedent.

16. What do you understand originalism to mean?

Response: Please see my response to Question 15. To the extent you are asking about original public meaning originalism as an academic matter, originalism means that the words of a constitutional provision should be interpreted by what they would have meant to a reasonable ordinary person at the time of enactment. The meaning of the words of the constitutional

provision do not change over time. Instead, as new factual situations arise over the decades or centuries, judges have to decide whether those new factual situations fall within or without the constant meaning of a constitutional provision.

17. Do you consider yourself an originalist? If so, provide an example of an opinion you authored that applies originalist analysis, and explain how that analysis determined the outcome. If not, describe the interpretive approach you apply to constitutional questions.

Response: Please see my responses to Questions 15 and 16. To the best of my recollection, I have not had the opportunity to write an originalist opinion. In every constitutional case I have presided over, there has either been on-point precedent that dictated the outcome of the case or on-point precedent that dictated I apply a non-originalist inquiry to resolve the constitutional question at issue. As a district court judge, my first obligation is to faithfully apply on-point precedents of the Supreme Court and the Eighth Circuit, whether or not those precedents espouse originalism.

18. What do you understand textualism to mean?

Response: Please see my responses to Questions 15 and 16. Although there are some nuances, as a general matter textualism and originalism are two sides of the same coin. The difference is that textualism involves the interpretation of statutes and regulations whereas originalism involves the interpretation of constitutional provisions. But the same basic interpretive principles apply as discussed in my responses to Questions 15 and 16.

19. Do you consider yourself a textualist? If so, provide an example of an opinion you authored that applies textualist analysis, and explain how that analysis determined the outcome. If not, describe the interpretive approach you apply to constitutional questions.

Response: Yes. Please see my responses to Questions 15-17. With respect to your request for one example of an opinion I authored that applies textualist analysis, *see Hurd v. Flywheel Energy Prod., LLC*, No. 4:21-CV-01207-LPR, 2024 WL 4571445 (E.D. Ark. Oct. 24, 2024). In having to make an *Erie* prediction about how the Arkansas Supreme Court would interpret a particular oil and gas statute, I noted that the Arkansas Supreme Court has recently begun to take a more textualist approach to the interpretation of statutes and I thus determined that a state intermediate court decision was not the best evidence of how the Arkansas Supreme Court would rule because the state intermediate court didn't engage in a serious textual analysis of the statute.

20. 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: The Supreme Court has shunned reliance on legislative history when a statute is unambiguous. *See Whitfield v. United States*, 543 U.S. 209, 215 (2005). It has also made clear that legislative history should not be used to manufacture ambiguity where there is none in the text. *See Milner v. Dep't of Navy*, 562 U.S. 562, 574 (2011). Accordingly, unless on-point precedent instructed otherwise, I would only consider using legislative history if a statutory word or phrase was truly ambiguous after all other tools in the statutory construction toolbelt had been deployed. In that circumstance, I would consider legislative history to the extent and in the way that on-point precedents of the Supreme Court and the Eighth Circuit instruct me to do so. In the absence of on-point precedents, I would only use legislative history to the extent something in that history might point me to the meaning that a reasonable ordinary person would have ascribed to the ambiguous word or phrase at the time of the statute's enactment.

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

Response: As a sitting federal district court judge, I faithfully apply all on-point precedent from the U.S. Supreme Court and the Eighth Circuit regarding when and to what extent congressional intent matters in interpreting statutes. As an Eighth Circuit judge, were I lucky enough to be confirmed, I would do the same. As an academic matter, I think that the text of a law—and not some secret intent—controls its interpretation. The text of the law—and not some secret intent—is what has gone through the Bicameralism and Presentment process and what can be read in U.S. Code by citizens who want to understand the law. I also think that, in all but the most unusual circumstances, it is little more than a fool's errand to try to determine and meld together the intent of all the members of the House that voted for the bill, the intent of all of the members of the Senate that voted for the bill, and the intent of the President assuming he signed the bill or otherwise allowed it to become law.

21. 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.[5]

a. What do you attribute this to?

Response: I have not studied the issue sufficiently to have an opinion at this time.

22. 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.[6]

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

[6] 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.

a. What do you attribute this to?

Response: I have not studied the issue sufficiently to have an opinion at this time.

23. 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: In my seven years on the district court, I have never seen, heard, or had reason to believe that any person from the United States Attorney's Office factored race into his or her decision to investigate, charge, or prosecute a person. If I ever heard or had reason to believe that race factored into an Assistant United States Attorney's decision to investigate, charge, or prosecute a person, I would immediately report that concern to the Chief Judge of my court, to the United States Attorney, and potentially to the Inspector General of or the Office of Professional Responsibility for the Department of Justice. Additionally, if I had evidence to substantiate my concerns, I would report the conduct to the appropriate bar disciplinary committee. Aside from this, judges should be role models in the pursuit of fair and impartial justice that eschews invidious discrimination. I run my courtroom and treat all participants in the legal system in a way that signals to prosecutors and defenders alike that everyone is entitled to be treated equally in our justice system.

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

Response: I believe we, as a country, should strive to have judges that are eminently qualified lawyers who will put aside their policy preferences and dispassionately interpret the law as it is written. I certainly hope that using such neutral criteria would result in a bench that includes judges of many different personal and professional backgrounds. Holding all else equal, having judges of different personal and professional backgrounds can broaden the expertise and perspective windows of the judiciary.

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

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

Response: I have not included below judicial opinions I have written or court filings I have made as legal counsel. Further, where I have provided a copy of my statements to the Committee in my Questionnaire, the original material, rather than a description here, is a better source for my statements.

a. Abortion

Response:

The Texas Abortion Case in the Supreme Court: Whole Women's Health v. Hellerstadt Oral Argument Preview, Fed. Soc'y Podcast, Mar. 1, 2016.

b. Affirmative action

Response:

Lee Rudofsky, Letter to the Editor, *S.A. Member's Remarks both 'Reactionary' and 'Absurd,'* Cornell Daily Sun, April 13, 2000.

Nathaniel Berman, *Student Assembly Debates Affirmative Action*, Cornell Daily Sun, Feb. 11, 2000.

c. Contraceptives or birth control

Response:

To the best of my recollection, none.

d. Gender-affirming care

Response:

To the best of my recollection, none.

e. Firearms

Response:

October 23, 2025: Panel Presenter, "Originalism in its Natural State," Federalist Society Arkansas Chapters Conference, Little Rock, Arkansas.

October 25, 2023: Speaker, "Originalism with Judge Rudofsky," Federalist Society Arkansas-Little Rock Student Chapter, Bowen School of Law, Little Rock, Arkansas.

f. Immigration

Response:

Symposium: The Stays – A Practical Victory, A Legal Concern, SCOTUSBlog (July 14, 2017, 6:34 pm).

Leslie Rutledge, *Wrestling with Congressional Intent in Immigration Law*, Daily Rec. (Ark.), Nov. 21, 2016.

May 1, 2026: Presiding Judge, "Naturalization Ceremony," United States District Court for the Eastern District of Arkansas & Clinton Presidential Center, Little Rock, Arkansas. A recording is available at https://www.youtube.com/live/pM1Gs8eQry4.

g. Same-sex marriage

Response:

Brief of Amici Curiae Supporting Petitioners, *Obergefell v. Hodges*, 576 U.S. 644 (2015) (No. 14-556).

Brief of Amici Curiae Supporting Respondents, *Hollingsworth v. Perry*, 570 U.S. 693 (2013) (No. 12-144).

h. Miscegenation

Response:

To the best of my recollection, none.

i. Participation of transgender people in sports

Response:

To the best of my recollection, none.

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

Response:

To the best of my recollection, none.

k. Racial discrimination

Response:

Lee Rudofsky, Letter to the Editor, *S.A. member 's remarks both 'reactionary' and 'absurd*,' Cornell Daily Sun, Apr. 13, 2000.

l. Sex discrimination

Response:

To the best of my recollection, none.

m. Religious discrimination

Response:

November 7, 2025: Panel Presenter, "Hon. Robert H. Bork Memorial Roundtable: A Person Without Prejudice Against Any Group—The American Tradition of Religious Respect," Federalist Society, Washington, District of Columbia. A recording of this panel is available at: https://www.youtube.com/watch?v=zFtkLCM1VDE.

September 11, 2017: Speaker, "Independent State Grounds: State-based Strategies for Securing Constitutionally Protected Freedoms," Alliance Defending Freedom, Cancun, Mexico.

July 11, 2017: Moderator, "The New Court: *Trinity Lutheran*, Justice Gorsuch, and Religious Liberty's Future," Alliance Defending Freedom, Laguna Niguel, California.

Leslie Rutledge, *Update on Religious Rights of Soldiers: Supreme Court Petition Alert*, Daily Rec. (Ark.), Jan. 16, 2017.

Leslie Rutledge, *Religious Conscience Must Be Protected*, Nw. Ark. Gazette, July 1, 2018.

Leslie Rutledge, *Protecting the Rights of Conscience*, Daily Rec. (Ark.), Aug. 8, 2016.

One Scalia Got Wrong, Daily Rec. (Ark.), July 4, 2016.

June 23, 2016: Panel Presenter, "Independent State Grounds: State-based Strategies for Protecting Religious Freedom," Alliance Defending Freedom, Maui, Hawaii.

n. Disability discrimination

Response:

To the best of my recollection, none.

o. Climate change or environmental disasters

Response:

Mountaintop Coal Mining: A Permitting Process in Flux, Fed. Soc'y Blog (Sept. 11, 2009).

p. "DEI" or Diversity Equity and Inclusion

Response:

To the best of my recollection, none.

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

Response: As a general matter, parties to a proceeding (including executive branch officials) must follow court orders and, if they disagree with such orders, the proper way to obtain relief is to seek review of the order in a higher court. But both the Supreme Court and legal scholars have suggested the existence of rare circumstances that might make it appropriate for litigants to disobey court orders. *See Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 111 (2009); William Baude, *The Judgment Power*, 96 Geo. L.J. 1807 (2008); Gary Lawson & Christopher D. Moore, *The Executive Power of Constitutional Interpretation*, 81 Iowa L. Rev. 1267, 1326 (1996); 17 Corpus Juris Secundum Contempt §§ 56-65. I am not going to prejudge the universe of circumstances in which an Executive Branch official would have a defense to defiance of a federal court order. That question would be highly dependent on the context of the order at issue, the defiance involved, and the justification asserted.

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: The legal analysis would be dependent on several different factors, including the type of order defied, the type of defiance at issue, whether civil contempt or criminal contempt is at issue, and the justifications alleged for the defiance. As a general matter, I would inquire into whether the defiance was intentional, whether the defiance is continuing, the severity and effect of the defiance, and the remorse of the defier. I would keep in mind that the exercise of the contempt power is "a delicate one, and care is needed to avoid arbitrary or oppressive conclusions." *Bloom v. Illinois*, 391 U.S. 194, 202 (1968).

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 response to Question 26. I will note the most obvious example of a potential legal basis to ignore a temporary restraining order or preliminary injunction: where a court enters a TRO or PI in complete absence of all jurisdiction.

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

Response: Generally speaking, no. But the President can veto bills passed by Congress and does have discretion to prioritize enforcement of federal laws.

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

Response: To my understanding, this question is currently being litigated, and therefore, it would be inappropriate for me to comment on this issue as a sitting federal judge and nominee to the Eighth Circuit.

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

Response: Please see my response to Question 28.

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

Response: Yes, the Supreme Court has said so.

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

Response: Some portions of the Constitution only apply to citizens. For example, Section 1 of the Fifteenth Amendment provides that "[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude[.]" Other portions of the Constitution apply more broadly. For example, in *Zadvydas v.* Davis, 533 U.S. 678, 693 (2001), the Supreme Court has made clear "the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent."

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

Response: The Supreme Court has that, within certain significant limits, Congress can do so.

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

Response: Federal judges generally should not be grading, or giving a thumbs up or thumbs down, to Supreme Court decisions. But in light of (1) the truly exceptional place that *Brown* and *Loving* hold in the legal, social, and historic fabric of our country, (2) the fact that those cases are so far beyond dispute that judges and nominees can express their agreement with them without calling into question their ability to fairly and faithfully apply Supreme Court precedent, and (3) the long line of former judges and nominees of Presidents of both parties who have answered this question regarding *Brown* and *Loving*, I am comfortable telling you that I believe *Brown* and *Loving* were correctly decided. As to all other Supreme Court cases, I believe the general rule against grading still applies and judges and nominees must—as a long line of judges and nominees of Presidents of both parties have—simply say they will faithfully and fairly apply Supreme Court precedent (as I will do) and leave it at that.

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

Response: Yes. That case held that the use of contraceptives is protected by the Fourteenth Amendment.

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

Response: Yes. That case held that private sexual relations between members of the same sex is protected by the Fourteenth Amendment.

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

Response: Yes. That case held that a state violates the Fourteenth Amendment if it fails to license marriages between same-sex couples on the same terms that it licenses marriages between opposite-sex couples.

37. 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.

Response: Under our Constitution, the way you win a Presidential election is that you are certified the winner of the electoral college. Joe Biden was certified the winner of the electoral college. To the extent you're asking me more than this, as a long line of nominees including Justice Jackson said, as a sitting judge, it would be inappropriate for me to comment.

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

Response: Please see my response to Question 37.

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 response to Question 37.

38. The 22nd Amendment says that "no person shall be elected to the office of the President more than twice."[7]

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

Response: Yes.

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

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

Response: Donald Trump was certified as the winner of the electoral college vote in the 2016 presidential election.

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

Response: Please see my response to Question 38.b.

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

Response: Donald Trump was certified as the winner of the electoral college vote in the 2024 presidential election.

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

Response: Please see my response to Question 38.d.

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

Response: Under the plain language of the 22nd Amendment, President Trump may not be elected to a third term.

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

Response: No.

40. 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.

41. 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, no. But I don't know the identity of all DOGE members.

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

Response: No.

43. 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: To the best of my knowledge, no. If I did, it was in passing at a conference, and no more than brief small talk.

44. 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.

45. 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.

46. 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: Judge Bove and I first met at a judicial conference after he took the bench. We have become friendly since that time. We have maintained correspondence about judicial matters. On a very few occasions, we have briefly discussed the fact that I was being considered for the Eighth Circuit

47. 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: Although I do not recall the actual conversations, I have probably spoken with Leonard Leo twice since November of 2024. One time would have been in November of 2024 and one time would have been in November of 2025. Both interactions would have been extremely brief small talk at the Federalist Society's National Lawyers Convention. Mr. Leo and I have not discussed anything involving my nomination to the Eighth Circuit.

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

Response: No.

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

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

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

Response: To the best of my knowledge, no.

50. 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.

51. 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.

52. 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."[8]

a. Do you agree with the above statement?

Response: I have never said these things about Democrats. I believe this question seeks my personal view on the mission statement of a political organization and my view on specific political comments made by the leader of that organization. The Code of Conduct for United States Judges instructs me to refrain from engaging in such issues.

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.

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

Response: In August of 2026, after I was nominated, I sent Mr. Davis a thank-you text because I heard that he had complimented my current judicial service to the White House. Other than Mr. Davis and the people specifically mentioned on the "About" page of the Article III Project website, I don't know who else is affiliated with the Article III Project.

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

Response: No.

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

Response: Please see my response to Question 53.

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

Response: Please see my response to Question 53.

54. 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 read the question, conducted research if necessary, and drafted my own answers. The Office of Legal Policy provided technical edits, such as grammar, formatting, style, etc.

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

September 30, 2026

Questions for Lee P. Rudofsky (8th Cir.):

1. 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: I have no knowledge of the certified 2020 General Election vote counts for any particular state.

   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 response to Question 1.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 response to Question 1.a.

   d. According to Arizona's certified 2020 General Election results, did Joe Biden receive more than 10,000 votes more than Donald Trump?

   Response: Please see my response to Question 1.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 response to Question 1.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 response to Question 1.a.

   g. Setting aside the precise vote totals, do you accept that, according to each state's certified results, Joe Biden received more votes than Donald Trump in Wisconsin, Pennsylvania, Georgia, Arizona, Nevada, and Michigan in the 2020 General Election?

Response: I have no reason to think you are incorrectly stating that each state's certified vote results say that Joe Biden received more votes than Donald Trump in the states you reference.

h. Are you aware of any evidence that Joe Biden did not win more votes than Donald Trump in each of the states listed above? If so, please explain.

Response: I am not personally aware of any such evidence. I did not preside over any of the 2020 election cases, did not make any investigation into the election, and did not review any of the allegations concerning fraud or other irregularities in the 2020 election. If such evidence exists, I would not have any reason to be personally aware of it.

2. Some judicial nominees have stated that Joe Biden "legally" won the 2020 election or won the election "as a matter of law." Setting aside any legal characterization: as a matter of fact, did Joe Biden win the 2020 presidential election?

Response: Under our Constitution, the way you win a Presidential election is that you are certified the winner of the electoral college. Joe Biden was certified the winner of the electoral college. To the extent you're asking me more than this, as a long line of nominees including Justice Jackson said, as a sitting judge, it would be inappropriate for me to comment. I believe commenting further would veer into the type of political matters that the Code of Conduct for United States Judges instructs me to refrain from commenting on.

3. 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 response to Question 1.h. I believe this question veers into the type of political matters that the Code of Conduct for United States Judges says I should refrain from commenting on.

4. On January 7, 2021, a joint session of Congress certified 306 electoral votes for Joe 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 answers to Questions 1.h, 2, and 3.

5. On January 6, 2021, a mob attacked the United States Capitol and more than 140 law enforcement officers were assaulted. President Trump has repeatedly described that day as "a day of love."

a. Do you believe that January 6, 2021 was a "day of love"?

Response: I have never used this phrase to describe January 6, 2021. I am not going to speculate as to what President Trump might mean by it. As a sitting federal judge, it would not be appropriate under the Code of Conduct for United States Judges for me to publicly comment on statements made by the President, Senators, Congressmen, or any other political figures. I made clear at my confirmation hearing what I think of the events of January 6, 2021. Specifically, I condemn in the strongest possible terms the violence and lawlessness that took place on January 6.

6. More than 60 federal and state lawsuits, including those 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: I did not preside over any of those lawsuits. I have not reviewed the allegations in the lawsuits, any evidence submitted in the lawsuits, or the grounds of decision. And I have not made my own investigation of the 2020 Election. Accordingly, I have no way to say whether none, some, or all of the lawsuits were correctly decided. Moreover, it does not seem to me appropriate for a sitting federal judge to publicly comment on the decisions of other judges except where doing so is necessary to an exercise of the judicial function.

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

Response: With respect to acting in bad faith, the answer is no. I presume good faith from all judges until proven otherwise. With respect to acting improperly—which I take to mean making the wrong decision—please see my response to Question 6.a.

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

Response: The answer to each of these questions is no.

8. To the extent you would decline to answer any election-related question on the ground that the 2020 result is a "subject of political debate," please identify what you believe remains genuinely debatable about whether Joe Biden received more votes than Donald Trump in the states at issue, given that those results were certified by the responsible state officials and upheld in more than sixty state and federal proceedings.

Response: The Code of Conduct for United States Judges does not use the phrase "subject of political debate." The Code requires judges to refrain from "political activity." Answering your

question would veer into the type of political activity that the code of Conduct for United States Judges says I should refrain from commenting on.

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

Response: The Supreme Court has made clear there is a constitutional right to privacy that applies in certain specific contexts. I will faithfully apply all Supreme Court precedents concerning a constitutional right to privacy.

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

Response: As a sitting federal district court judge and a nominee to a circuit court, it would be inappropriate for me to grade, or give up a thumbs up or thumbs down, to specific Supreme Court cases.

10. What judges or justices would you consider foundational to your judicial philosophy, and why?

Response: Primarily Justices Antonin Scalia and Clarence Thomas. Justice Scalia is probably the person most responsible for originalism and textualism making the long march back from legal obscurity to legal orthodoxy. And the clarity of his writing and thinking is what first attracted me to originalism and textualism as a law student. Justice Thomas has been a consistent advocate for originalism and textualism over the last 3 and 1/2 decades, and I very much respect his desire to reach whatever result is required by a faithful originalist or textualist analysis.

11. 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: I take your question to be asking about contraceptives and abortion. The Supreme Court has concluded that individuals have a constitutionally protected right to use contraceptives. *See Griswold v. Connecticut*, 381 U.S. 479, 485-86 (1965). The Supreme Court has held that individuals do not have a constitutional right to abortion. *See Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022). To the extent your question is broader than contraceptives and abortion, I will faithfully apply all applicable Supreme Court precedents to cases concerning whether a decision that an individual wants to make is constitutionally protected. In the absence of precedent as to a particular decision an individual wants to make, I will faithfully determine whether (1) the original meaning of any constitutional provision protects the decision, or (2) whether the specific conduct the individual wants to engage in constitutes a "right" that is "deeply rooted in history and tradition[,] and . . . is essential to our nation's scheme of ordered liberty." *Id.* at 237 (citing *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997)).

12. 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: To the extent your question is about diversity of judges, I believe we, as a country, should strive to have judges that are eminently qualified lawyers who will put aside their policy preferences and dispassionately interpret the law as it is written. I certainly hope that using such neutral criteria would result in a bench that includes judges of many different personal and professional backgrounds. Holding all else equal, having judges of different personal and professional backgrounds can broaden the expertise and perspective windows of the judiciary.

To the extent that your question is about law clerks, I believe we, as judges, should strive to select the most qualified law clerks in terms of writing skills, research skills, understanding of the law, ability to work under pressure, and ability to work on a small team. I certainly hope that using such neutral criteria would result in law clerks from many different personal and professional backgrounds. Holding all else equal, having law clerks of different personal and professional backgrounds can broaden the expertise and perspective windows of the judiciary.

b. When selecting your law clerks, will you commit to considering qualified applicants from a broad range of backgrounds, including candidates from a variety of law schools, from varying socioeconomic circumstances, and of differing races, ethnicities, religions, gender identities, sexual orientations, and abilities?

Response: Please see the second paragraph of my response to Question 12.a. I have hired and will continue to hire clerks (from all different law schools, professional backgrounds, and socioeconomic circumstances) based on merit and not based in any way on protected characteristics. I have been and will continue to be dedicated to giving every qualified applicant an equal opportunity to compete for any open staff position in my chambers.

c. Please describe how you plan to find and hire law clerks. Will you consider candidates from various law schools and backgrounds, including first-generation lawyers?

Response: To hire law clerks, I evaluate the applications that are sent to my chambers based on the criteria I discussed in response to Question 12.a. If an application seems promising under those criteria, I have each of my law clerks do a separate interview with the applicant. One interview is more legally substantive, while the other interview is more about "soft-skills." After the interviews, the clerks and I discuss the applicant's answers and whether that applicant should advance to a final interview with me. I generally interview 2-4 people for each open clerkship spot. I intend to continue hiring

clerks in this way if I am lucky enough to be confirmed to the Eighth Circuit. As I always have, I will continue to consider "candidates from various law schools and backgrounds, including first-generation lawyers." This is consistent with my previous statement that I have been and will continue to be dedicated to giving every qualified applicant an equal opportunity to compete for any open staff position in my chambers.

d. Will you make your clerkship hiring criteria and application process transparent and accessible to applicants who lack the networks or institutional connections that often drive clerkship hiring?

Response: Yes.

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

Response: Please see my responses to Questions 12.a through 12.d.

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

a. What does the 22nd Amendment state?

Response: The 22nd Amendment reads as follows:

"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: I can't and won't prejudge an issue that might come before me. What I can say is that the plain language of the Amendment certainly suggests the answer to your question is no.

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

Response: Two.

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 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 would rule according to the law in all cases regardless of an individual's political standing or the political consequences.

14. 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: As a federal district court judge, I have always treated every individual that comes before me —regardless of that individual's personal characteristics and regardless of the capacity in which that individual appears—with dignity and respect. Similarly, I have always given the claims, defenses, and positions of every party before me the same full and fair consideration regardless of the party's personal characteristics. I will continue to do both these things, whether on the district court or on the Eighth Circuit if I am lucky enough to be confirmed. I believe this is a bedrock commitment all judges must honor for our legal system to function effectively. With respect to the appropriate way to refer to a party, lawyer, witness, juror, or other participant in the judicial process, there are a large number of fact-specific circumstances that might affect my decision, including but not limited to whether the way I refer to an individual would be perceived as taking sides in the legal dispute at issue in a particular case. I therefore can't and won't commit to a blanket approach, but I want to stress that, in every circumstance, I will treat all participants in the process with the utmost dignity and respect.

15. 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 Supreme Court has said so. And I will faithfully apply all precedents of the Supreme Court. Beyond that, I can't and won't prejudge an issue that might come before me.

16. 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: As a federal district court judge, I have worked every day to ensure that every person who appears before me—regardless of the person's immigration status, national original or language—is treated with dignity and afforded all the protections under the Constitution and federal law that are appliable to the circumstances of the person's case.

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

Response: Depending on the order to be enforced and the factual circumstances of the case, enforcement powers would include, but not be limited to, imposition of sanctions, initiation of contempt proceedings, dismissal of an appeal, referral to an appropriate bar authority, and removal from the court bar.

18. In the documents you provided the Senate Judiciary Committee, have you identified every publicly accessible -- or previously publicly accessible -- social media, blog, forum, or other online account that you have created, maintained, controlled, contributed to, or posted under, on any platform?

If not, please identify any publicly accessible social media, blog, forum, or other online account that you have created, maintained, controlled, contributed to, or posted under, on any platform. Please include any non-private (or any previously non-private) accounts on Twitter/X, Facebook, Instagram, LinkedIn, YouTube, TikTok, Truth Social, Substack, Reddit, any personal blogs or websites, or any comparable platforms. For each account, please state:

a. the platform or service;

b. the username, handle, screen name, and any display name associated with the account;

c. the approximate dates the account was active;

d. whether the account was maintained in your own name, under a pseudonym, or anonymously; and

e. the account's current status (active, deactivated, deleted, or set to private).

Response: I have provided all responsive information and materials required by the Committee in the Senate Judiciary Questionnaire.

19. Since you were first under consideration for this nomination, have you deleted, deactivated, archived, restricted the visibility of, or removed content from any online account, or

directed or requested that anyone do so on your behalf? If so, please identify the account and describe what was changed or removed and when.

Response: No.

20. Article III states that federal courts decide "cases" and "controversies."

a. What do you look for when deciding whether a matter before you is actually a dispute constituting a "case" or "controversy?"

Response: Supreme Court precedents instruct courts to evaluate whether a plaintiff had standing to bring a claim when the Complaint was filed—that is, whether a plaintiff had a concrete and particularized injury that is traceable to a defendant's conduct and redressable by a court. Even where standing exists, Supreme Court precedent also instructs courts to evaluate whether a claim is ripe for adjudication and whether developments occurring after the filing of the Complaint have mooted Plaintiff's claim. I will apply all relevant Supreme Court precedents on these doctrines and other related doctrines.

b. What harms could arise if a court were to decide a dispute that fails to meet the case-or-controversy requirement?

Response: The Article III case-or-controversy requirement is, first and foremost, meant to ensure that unelected judges exercise only the judicial power as opposed to legislative or executive power. Unless a judge's power to interpret statutes and the Constitution is limited to deciding a real case in front of him, that judge could easily usurp the authority of the elected branches, which would be dangerous to individual liberty because people don't get to vote judges out of office if they don't like what the judge does. Speaking more practically, where a court decides a dispute in the absence of the parties being genuinely adverse to each other, it is less likely that the judge has been presented with the truly best arguments in favor of each side's position. For the judicial system to function at its best, and for the judge to have the best shot at reaching the correct legal answer in a case, both sides should have an incentive to present their strongest arguments.

c. If neither party raises that requirement — even if both parties are satisfied with their positions or purported settlement agreements — does a judge still have an independent obligation to ensure that any case before them meets all constitutional requirements?

Response: The Supreme Court has made clear that the Article III case-or-controversy requirement is so critical to our constitutional structure that judges must raise its potential absence *sua sponte* where the parties have failed to raise the issue. As a general matter, the best practice is for a judge to raise the issue and then give the parties the chance to argue it before deciding the issue.

d. What recourse is available to a judge who concludes the parties before them are not adverse as constitutionally required?

Response: If the parties are not constitutionally adverse, the Court must dismiss the case without prejudice. The Supreme Court has been clear on this point. If the problem is standing, any opinions already issued in the case are definitionally void because jurisdiction to issue those opinions was absent. If the problem is mootness, the dismissing court will have to decide whether any opinions already issued should be vacated under cases like *United States v. Munsingwear, Inc.*, 340 U.S. 36 (1950). Also, I should note that a without-prejudice dismissal allows (in many circumstances) the re-filing of a claim if the parties become adverse.

Questions for the Record

Lee Phillip Rudofsky – Nominee to be U.S. Circuit Judge for the Eighth Circuit

Sen. Adam Schiff (CA)

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

Response: As far as I understand, there is no single federal law that defines and punishes public corruption. There are instead several federal laws that, collectively, proscribe activities that everyday people would characterize as public corruption. Those laws include, but are not limited to, 18 U.S.C. § 201 (official bribery), 18 U.S.C. § 666 (program bribery), 18 U.S.C. § 1951 (Hobbs Act violations), 18 U.S.C. §§ 1341 and 1343 (mail and wire fraud), 18 U.S.C. § 1952 (Travel Act violations), and 18 U.S.C. § 1961 (RICO violations).

a. If one of your law clerks used their position to give or steer money to their friends, would you consider that public corruption?

Response: Please see my response to Question 1. As far as federal laws go, there is no single definition of public corruption. If a law clerk committed the acts you suggest, I would immediately report his or her conduct to the Clerk of my Court and the Chief Judge of my Court to help me decide what further action to take. I would also analyze whether his or her specific conduct violated or potentially violated any federal laws, state laws, or applicable ethics rules.

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

Response: Yes.

a. Describe the Article III cases and controversies requirement.

Response: The Article III case-or-controversy requirement is, first and foremost, meant to ensure that unelected judges exercise only the judicial power as opposed to legislative or executive power. Unless a judge's power to interpret statutes and the Constitution is limited to deciding a real case in front of him, that judge could easily usurp the authority of the elected branches, which would be dangerous to individual liberty because people don't get to vote judges out of office if they don't like what the judge does. Speaking more practically, where a court decides a dispute in the absence of the parties being genuinely adverse to each other, it is less likely that the judge has been presented with the truly best arguments in favor of each side's position. In order for the judicial system to function at its best, and for the judge to have the best shot at reaching the correct legal answer in a case, both sides should have an incentive to present their strongest arguments.

Supreme Court precedents instruct courts to evaluate whether a plaintiff had standing to bring a claim when the Complaint was filed—that is, whether a plaintiff had a concrete and particularized injury that is traceable to a defendant's conduct and redressable by a

court. Even where standing exists, Supreme Court precedent also instructs courts to evaluate whether a claim is ripe for adjudication and whether developments occurring after the filing of the Complaint have mooted Plaintiff's claim. I will apply all relevant Supreme Court precedents on these doctrines and other related doctrines.

b. Are federal courts limited to cases and controversies where the parties have adverse legal interests?

Response: Yes, the Supreme Court has said so.

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

Response: I am a sitting federal judge. Because such a case might come before me, and I would then potentially have to determine whether the case qualified as frivolous, I don't believe it is appropriate to pre-judge the issue. Having said that, it would be an extraordinarily rare circumstance that would lead to a non-frivolous case where a plaintiff and defendant were the same person.

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

Response: Under the Prison Litigation Reform Act, courts must screen complaints filed by prisoners and *sua sponte* dismiss the frivolous ones. 28 U.S.C. § 1915(e). The same is true for complaints filed by all plaintiffs that want to proceed *in forma pauperis*. *Id.* Additionally, Federal Rule of Civil Procedure 11 provides a mechanism for sanctioning frivolous complaints under the specific circumstances laid out in the rule. Fed. R. Civ. P. 11. These are just some of the typical responses available for frivolous lawsuits.

3. How would you describe your judicial philosophy?

Response: As a federal district court judge, I am bound by on-point precedent from the Eighth Circuit and the Supreme Court. Were I lucky enough to be confirmed to the Eighth Circuit, I would be similarly bound. I will faithfully and fully apply all on-point precedent. Having said that, I am an originalist and textualist. For me, the appropriate version of that is an original public meaning originalist and textualist. Although there are some nuances between the two, as a general matter, they're two sides of the same coin—originalism being a methodology with respect to interpretation of the Constitution, and textualism being a methodology with respect to the interpretation of statutes or regulations. The justification for originalism/textualism comes from three features of the Constitution: one is separation of powers, one is Bicameralism and Presentment, and one is the Procedural Due Process protections in the Fifth and Fourteenth Amendments. All of those features get at the same point, which is that the only authority a judge has and has been given by the Constitution is to interpret the law as written—not to rewrite the law and not to make new law, either intentionally (because it aligns with his or her policy preferences) or unintentionally. And originalism and textualism are the best methods I have found to ensure judges are interpreting the law as written.

4. How would you describe your philosophy regarding statutory interpretation?

Response: Please see my response to Question 3.

a. What methodology do you use to ensure your rulings are predictable and properly constrained within the bounds of the law?

Response: Please see my response to Question 3.

5. When confronted with an ambiguous statute, how do you consider legislative history in your decision-making process?

Response: The Supreme Court has shunned reliance on legislative history when a statute is unambiguous. *See Whitfield v. United States*, 543 U.S. 209, 215 (2005). It has also made clear that legislative history should not be used to manufacture ambiguity where there is none in the text. *See Milner v. Dep't of Navy*, 562 U.S. 562, 574 (2011). Accordingly, unless on-point precedent instructed otherwise, I would only consider using legislative history if a statutory word or phrase was truly ambiguous after all other tools in the statutory construction toolbelt had been deployed. In that circumstance, I would consider legislative history to the extent and in the way that on-point precedents of the Supreme Court and the Eighth Circuit instruct me to do so. In the absence of on-point precedents, I would only use legislative history to the extent something in that history might point me to the meaning that a reasonable ordinary person would have ascribed to the ambiguous word or phrase at the time of the statute's enactment.

6. Supreme Court Justice Clarence Thomas has argued that a judge has a constitutional duty to overrule past Supreme Court precedent if it is "demonstrably erroneous," regardless of *stare decisis*.

a. Do you agree with this argument? Why or why not?

Response: The Supreme Court set out the applicable test to overrule its own precedent in *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022). Your question essentially asks whether I agree or disagree with the standard set out in *Dobbs*. As a sitting federal district court judge and a nominee to the Eighth Circuit, it would not be appropriate for me to give a thumbs up or thumbs down to, or otherwise grade, particular Supreme Court cases.

b. If you do agree, what factors would you consider to determine if precedent is "demonstrably erroneous"?

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

c. What is your approach to considering *stare decisis*?

Response: With respect to vertical *stare decisis*, I am bound by on-point precedents of the Supreme Court and the Eighth Circuit. Were I lucky enough to be confirmed to the Eighth Circuit, I would be bound by on-point precedents of the Supreme Court.

I do not have a current approach to horizontal *stare decisis* issues because they do not come up at the district court level. If I am lucky enough to be confirmed to the Eighth Circuit, I will faithfully apply all on-point precedent from the Supreme Court and the Eighth Circuit with respect to horizontal *stare decisis* issues. In the Eighth Circuit, a three-judge panel is not authorized to overturn precedent from a prior three-judge panel unless that precedent has been "cast into doubt by a decision of the Supreme Court." *Patterson v. Tenet Healthcare, Inc.*, 113 F.3d 832, 838 (8th Cir. 1997). With respect to the power of the Eighth Circuit sitting *en banc*, the Eighth Circuit has said that overturning circuit precedent "is appropriate when the precedent is 'erroneous' and 'perpetuates unwarranted disuniformity in the law.'" *S.A.A. v. Geisler*, 127 F.4th 1133, 1136 (8th Cir. 2025) (en banc) (citation omitted); *see generally* Fed. R. App. P. 40(b)(2).

7. You presided over the case *Arkansas State Conference NAACP v. Arkansas Board of Apportionment* (2022), where plaintiffs challenged an Arkansas electoral map under Section 2 of the Voting Rights Act on the grounds that the map diluted the votes of Black residents. You noted that there was "a strong merits case that at least some of the challenged districts in the Board Plan [were] unlawful under §2 of the Voting Rights Act" but found that there was no express or implied private right of action to enforce Section 2 of the Voting Rights Act.

a. What precedent did you rely on to come to the holding there was no private right of action to enforce Section 2 of the Voting Rights Act?

Response: As Justices Gorsuch and Thomas noted in a concurring opinion in *Brnovich v. Democratic National Committee*, courts (including the Supreme Court) had long "assumed—without deciding—that the Voting Rights Act of 1965 furnishe[d] an implied cause of action under § 2." 594 U.S. 647, 690 (2021) (Gorsuch, J., concurring). That assumption had come from *dicta* in a series of Supreme Court cases concerning *other sections* of the Voting Rights Act decided in an era where the Supreme Court freely created rights of action where Congress had not done so. But *dicta* and assumptions are not holdings. As I explained in my Order in *Arkansas State Conference NAACP v. Arkansas Board of Apportionment*, neither the Supreme Court nor the Eighth Circuit has ever issued an actual holding that there is a private right of action to enforce § 2. 586 F. Supp. 3d 893, 912-13 (E.D. Ark. 2022). And more recently, in *Alexander v. Sandoval* and its progeny, the Supreme Court jettisoned its old approach to freely creating rights of action where Congress had not done so. *See, e.g.*, *Alexander v. Sandoval*, 532 U.S. 275, 286-87 (2001). It is true that *Sandoval* and its progeny acknowledged that there are times where Congress implicitly creates a private right of action without explicitly saying so. But *Sandoval* and its progeny have provided a very strict test for when a court could find a right of action to have been implied by Congress. I merely recognized that (1) the *Sandoval* test applied to the question of whether Congress implicitly created a right of action to enforce § 2 of the Voting Rights Act, and (2) analyzed § 2 of the Voting Rights

Act under the *Sandoval* test. My decision was affirmed by the Eighth Circuit. And the Plaintiffs in the case did not seek Supreme Court review.

b. For decades prior to your decision, private individuals had sued under Section 2, including in cases that had gone up to the Supreme Court. Why did you disregard decades of precedent when interpreting the Voting Rights Act?

Response: Please see my response to Question 7.a. I did not disregard binding precedent. It is the holding of a court's decision that constitutes binding precedent. *Dicta* is not binding on a lower court, at least where (as here) that *dicta* was based on reasoning that has subsequently been repudiated by the Supreme Court. And like *dicta*, assumptions are also not binding on a lower court. *See Brnovich v. Democratic National Committee*, 594 U.S. 647, 690 (2021) (Gorsuch, J., concurring).

c. In your view, when are federal judges allowed to disregard precedent?

Response: A federal judge may never disregard binding precedent. I have never disregarded binding precedent, nor would I ever do so.

8. In 2013 and 2015, you signed on to two Supreme Court amicus briefs in support of same-sex marriage while on the Romney campaign. During your Senate confirmation process to become a district court judge, you walked back your support and indicated you would not have joined the amicus briefs, writing in response to Questions for the Record that "if I could go back in time and do it over again, I would not have joined the amicus briefs."

a. What is your position now?

Response: When I joined the amicus briefs, I was not an expert in Fourteenth Amendment jurisprudence. My litigation practice up to that time had not involved substantive due process or equal protection cases, and I had not studied the doctrines since law school. I joined the amicus briefs because, at the time, the arguments in the briefs seemed—on the whole—persuasive to me. I did not write, edit, or have any opportunity to suggest or alter the content of the amicus briefs. My involvement was limited to a binary decision to join or not join after Mr. Mehlman and his counsel finalized the amicus briefs.

In the years after I joined the amicus briefs, I personally litigated numerous equal protection and substantive due process cases, and I reviewed and substantively edited the work of other attorneys in even more of these cases. This required me to—in a serious and systematic way—analyze and grapple with the vast caselaw that forms the nuanced doctrine on the clauses. It also caused me to study the various academic theories on the original public meaning of the Fourteenth Amendment. Based on this learning, if I could go back in time and do it over again, I would not have joined the amicus briefs. The briefs did not include any analysis of the original public meaning of the Fourteenth Amendment or any analysis of *Washington v. Glucksberg*, 521 U.S. 702 (1997).

I have not said whether I agree or disagree with the Supreme Court's decisions in *Hollingsworth* or *Obergefell*. As a sitting federal judge and a judicial nominee, it would be inappropriate for me to grade or give a thumbs up or thumbs down to any particular decision of the Supreme Court. As a federal district court judge, or an Eighth Circuit judge if I am lucky enough to be confirmed, I will fully and faithfully apply both *Hollingsworth* and *Obergefell*, just like any other controlling precedent of the Supreme Court.

b. Why did you change your position?

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

9. You have a long track record of opposing reproductive health care and defending Arkansas's abortion restrictions. You defended the state's law imposing additional burdens on medication abortion providers, the state's pre-viability abortion ban, and the termination of Medicaid reimbursement to Planned Parenthood.

a. Do you believe that a woman has a right to choose what happens to her body?

Response: The Supreme Court has concluded that individuals have a constitutionally protected right to use contraceptives. *See Griswold v. Connecticut*, 381 U.S. 479, 485-86 (1965). The Supreme Court has held that individuals do not have a constitutional right to abortion. *See Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022). To the extent your question is broader than contraceptives and abortion, I will faithfully apply all applicable Supreme Court precedents to cases concerning whether a woman has a right to choose what happens to her body. In the absence of precedent as to a particular choice a woman wants to make, I will faithfully determine whether (1) the original meaning of any constitutional provision protects the choice, or (2) whether the specific choice the woman wants to make constitutes a "right" that is "deeply rooted in history and tradition[,] and . . . is essential to our nation's scheme of ordered liberty." *Id.* at 237 (citing *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997)).

b. Would you be able to set aside your own personal views when adjudicating cases involving reproductive health care?

Response: Yes, as I have done and will continue to do in all manner of cases.

10. You also have a long track record of opposing the rights of LGTBQ+ individuals. For instance, you defended Arkansas's statute allowing non-biological fathers in opposite-sex marriages to be listed on the birth certificate of their child but denying this right to same-sex couples, arguing that classifying parentage along biological lines was a legitimate government interest. You urged the Supreme Court to grant cert in a case from Washington state involving a florist who refused to provide arrangements for a same-sex couple's wedding. And you argued against an Arkansas city ordinance providing citizens the right to be free from discrimination based on sexual orientation and gender identity.

a. Do you think federal civil rights laws extend protections to LGBTQ+ individuals?

Response: *Bostock v. Clayton County* is clear that Title VII prohibits an employer from firing someone because the person is homosexual or transgender. 590 U.S. 644, 651 (2020). Whether and how *Bostock* applies to other federal civil rights law is the subject of ongoing litigation or at least is likely to come before me at the district court or (if I'm lucky enough to be confirmed) at the Eighth Circuit. The issue is also a hot topic of political debate. For all these reasons, individually and collectively, it would be inappropriate for me to comment further—except to say that I will faithfully apply all on-point precedents from the U.S. Supreme Court and the Eighth Circuit.

b. How would you assure LGBTQ+ litigants who come before you in federal court that you will render unbiased judgments in their cases?

Response: As a federal district court judge, I have always treated every individual that comes before me—regardless of that individual's personal characteristics and regardless of the capacity in which that individual appears—with dignity and respect. Similarly, I have always given the claims, defenses, and positions of every party before me the same full and fair consideration regardless of the party's personal characteristics. I will continue to do both these things, whether on the district court or on the Eighth Circuit if I am lucky enough to be confirmed. I believe this is a bedrock commitment all judges must honor for our legal system to function effectively.

11. You gave a speech at various Federalist Society events titled "The Dogs that Caught the Car: Current Challenges to and Opportunities for Originalism and Textualism." Your speech outline states "[i]n my view, textualism and originalism are in an even more precarious position than they were 40 years ago. We need to cement those methodologies in not just binding precedent, but in the fabric of our legal culture. And that can't happen if we get complacent. Indeed, if we get complacent, we may just snatch defeat from the jaws of victory."

a. How do you define judicial activism?

Response: A judicial activist is a jurist that intentionally invents constitutional rights that the jurist knows are not provided for by the language or structure of the Constitution. A judicial activist is a jurist that intentionally interprets a statute in a way the jurist knows is inconsistent with the meaning of the language of the statute. A judicial activist is a jurist that decides a case when the jurist knows that he lacks jurisdiction over the case. Judicial activists tend to do these things either because the results of their decisions accord with their own policy preferences or because the results of their decisions accord with what they imagine to be the policy preferences of Congress or the people of the United States.

b. What did you mean when you used the phrase "snatch defeat from the jaws of victory"? Does this phrase comport with judging a case on its merits, untethered to one's personal views?

Response: In response to a question Senator Grassley asked at my confirmation hearing, I explained why I believe that originalism and textualism are the best methodologies to ensure objective judging that honors the Constitution, protects individual liberties, and promotes the rule of law. As you might imagine, given this view, I believe it to be a good thing (*i.e.*, a victory) for the law and for our country that originalism and textualism have been widely adopted in the judiciary. And I worry that it would be a bad thing (*i.e.*, a defeat) for the law and for our country if originalism and textualism were to fall out of use. That is all I meant by the phrase you reference in your question. I should also note that I was very clear in this speech that my academic discussion of the promise and potential pitfalls of originalism/textualism should not be confused with how I will judge cases.

c. As part of this speech, you advocated for a "burgeoning new sub-theory in the textualism field" called corpus linguistics, an empirical method that entails the use of large databases to decipher textual meaning. But this very methodology or technology was not available to the founders or to legislators writing laws even a few decades ago. How can such a new technology really decipher legislative intent or the intent of the founders?

Response: In response to a question Senator Grassley asked at my confirmation hearing, I explained that I was an original public meaning originalist and textualist. In my view, interpreting a legal text should be focused on what a reasonable ordinary person would have understood the language of that legal text to mean at the time of enactment. Interpreting a legal text should not be focused on the secret intent of legislators or the secret intent of the Founders. Corpus linguistics gives judges another tool in addition to dictionaries to determine what a word or phrase would have meant to a reasonable ordinary person at the time of a legal text's enactment.

A corpus is simply a database of language, often including books, newspapers, letters, contracts, news transcripts, TV and movie transcripts, and political speeches. By sifting through the data, one has a better chance to determine how a word or phrase was actually used in common parlance in the time period in which the statute or constitutional provision at issue was adopted. And one can assess the relative frequency of a word's various usages, which potentially is helpful in figuring out which meaning of a word was adopted in the statutory or constitutional provision at issue.

d. Why in your view are other interpretive tools, like legislative history, not worth cementing or using?

Response: Please see my response to Question 5. In addition to what I said there, it is worth noting two other points. First, legislative history has not gone through the Bicameralism and Presentment process required by the Constitution to create binding law. Second, the use of legislative history is almost always in the service of a judge trying to divine what a legislature intended the statute to do as opposed to what the language of a statute would have actually meant to a reasonable ordinary person at the

time of enactment. The words of a legal text are supposed to have paramount importance and not be subordinated to a judge's speculation about the intent of legislators.

12. In a speech you published in 2018 concerning the Senate's confirmation hearing of Justice Brett Kavanaugh, you stated that the "only other criteria" Senators use to evaluate judicial nominees is whether the nominee's judicial philosophy falls within the mainstream of legal thought.

a. How do you define mainstream legal thought?

Response: The quote you reference was not made in a speech, but rather in an article. I cannot recall what I meant by the phrase "mainstream of legal thought" other than that I believed that then-Judge Kavanaugh's jurisprudence was not extreme or radical, and that he would not be an outlier Justice on the Court. Indeed, I suggested in the article that then-Judge Kavanaugh's jurisprudence reflected the "legal philosophy of nearly half the judges in our judiciary."

b. You critiqued Democratic Senators, noting "they only care about whether they think Judge Kavanaugh will vote the way they want him to vote on their pet policies." What did you mean when you said this?

Response: When I wrote this article, I was not a sitting federal judge or a judicial nominee. Today, I am both of those things. To explain what I meant would require me to comment on the way Senators of a particular political party carried out their advice and consent function. This veers into the type of political activity that the Code of Conduct for United States Judges instructs me to refrain from engaging in.

13. At your Senate Judiciary Committee nomination hearing, Senator Blumenthal asked you which candidate won the 2020 election. You responded that Joe Biden was certified by the Electoral College but refused to state who won the popular vote.

a. As a matter of fact, which of the two general election candidates lost the 2020 election?

Response: Under our Constitution, the way you win a Presidential election is that you are certified the winner of the electoral college. Joe Biden was certified the winner of the electoral college. Donald Trump was not. To the extent you're asking me more than this, as a long line of nominees including Justice Jackson said, as a sitting judge, it would be inappropriate for me to comment. I believe commenting further would veer into the type of political matters that the Code of Conduct for United States Judges instructs me to refrain from commenting on.

b. As a matter of fact, which of the two general election candidates lost the 2024 presidential election?

Response: Donald Trump was certified the winner of the 2024 election. Kamala Harris was not. To the extent you're asking me more than this, as a long line of nominees including Justice Jackson said, as a sitting judge, it would be inappropriate for me to comment. I believe commenting further would veer into the type of political matters that the Code of Conduct for United States Judges instructs me to refrain from commenting on.

c. As a matter of fact, did Donald Trump lose the 2020 election? Yes or no.

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

d. Aside from the Electoral College and the certification of the election, who received the most recorded votes in the 2020 presidential election?

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

e. Who won the majority of the electoral college votes in the 2020 presidential election?

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

f. Do you have any doubts about the outcome or integrity of the 2020 presidential election results?

Response: I believe this question veers into the type of political matters that the Code of Conduct for United States Judges says I should refrain from commenting on.

14. At your Senate Judiciary Committee nomination hearing, Senator Blumenthal asked you whether the U.S. Capitol was attacked on January 6, 2021. You refused to describe the events of January 6, 2021, as an attack on the U.S. Capitol.

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

Response: Yes. I condemn in the strongest possible terms the violence and lawlessness that took place on January 6, 2021.

b. If yes, 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 saw on TV clips of what appeared to be police officers being pushed, punched, hit, kicked, dragged, and struck with objects. I also saw what appeared to be people breaking windows in the Capitol to unlawfully enter the building. I made clear at my confirmation hearing what I think of the events of January 6, 2021, including condemning the violence and lawlessness of that day in the strongest possible terms.

c. What level of violence would constitute an "attack" in your view? Do you consider the actions taken against law enforcement officers on January 6th at the U.S. Capitol to constitute an "attack"?

Response: Please see my answers to Questions 14.a and 14.b. It would be inappropriate for me to offer a legal opinion on whether the events constitute an attack.

15. At your Senate Judiciary Committee nomination hearing, you answered Senator Blumenthal's questions about the 2020 presidential election and the January 6, 2021, attack on the U.S. Capitol with a response that was substantially similar, if not identical, to the responses of recent nominees.

a. In preparing for your hearing and your written responses, did anyone, formally or informally, direct, advise, coach, suggest, or recommend how you should answer questions about the 2020 election and the January 6, 2021, attack on the U.S. Capitol? If so, who provided that guidance?

Response: The answers that I gave in my confirmation hearing and in all of the QFRs are my own. I prepared for the confirmation hearing as you would expect a lawyer to prepare for one of the most important hearings of his professional life. That included watching numerous prior hearings and reading numerous prior QFRs. But no one told me I should answer a particular question in a particular way.

b. In preparing for your hearing and your written responses, were you directed, encouraged, or advised to review the hearing testimony or written responses of previous nominees about the 2020 election and the January 6, 2021, attack on the U.S. Capitol? If so, who provided that guidance?

Response: I knew, from my nomination to the district court seven years ago, that one good way to prepare for my confirmation hearing was to watch prior hearings and read prior QFRs. After I began doing so, the Office of Legal Policy gave me the same general advice. To the best of my recollection, no one specifically directed me to testimony from other nominees regarding the 2020 election or January 6. Of course, this specific testimony was a small part of the overall testimony (oral and written) that I reviewed from other nominees.