Senator Chuck Grassley, Ranking Member
Questions for the Record
Ms. Bridget Meehan Brennan
Judicial Nominee to the U.S. District Court for the Northern District of Ohio

1. **In the context of federal case law, what is super precedent? Which cases, if any, count as super precedent?**

   Response: To my knowledge, this is not a term used or defined by the Supreme Court or the Sixth Circuit Court of Appeals. If confirmed, I will faithfully apply all applicable Supreme Court and Sixth Circuit precedent.

2. **In 2021, Cleveland saw all types of violent crime, except for robberies, rise. According to the Cleveland Police Chief, there were more murders in the first four months of the year compared to last year, and the "rate in which police are taking guns out of the hands of criminals is up 100% from the same time last year." Yet you have stated that "we're not going to arrest or prosecute out of this problem." Do you think this philosophy will influence the way you will sentence convicted defendants if you are confirmed?**

   Response: I am currently the United States Attorney for the Northern District of Ohio and have served as a federal prosecutor for more than 14 years. I am deeply committed to the rule of law, having spent the majority of my career holding individuals who violate federal laws accountable. Additionally, as the chief federal law enforcement official for the District, I have sought to build relationships with community leaders and groups because I have recognized the importance not just of prosecution, but of prevention as well.

   In making the comment cited in this question, I further recognized the increase in violent crime in the Northern District of Ohio, the importance of community stakeholder involvement, and my hope that community members would reach out to law enforcement when they suspected illegal conduct was taking place. If confirmed, my personal opinions will not have any effect on my fair and impartial application of the law to the facts. In the area of sentencing, I will faithfully adhere to the sentencing factors set forth in 18 U.S.C. § 3553(a) and any relevant policy statements provided by the Sentencing Commission.

3. **You have noted that a solution to solve the issue of increasing violent crime in Cleveland, is the involvement of "community leaders, faith-based organizations, and medical professionals."**

a. **What solution(s) have these organizations in conjunction with the U.S. Attorney's Office proposed to tackle the issue of increasing crime rates in Cleveland?**

Response: Project Safe Neighborhoods (PSN) was established in 2001 to bring a multitude of people together to identify and provide solutions to violent crime problems. In the Northern District of Ohio, Stand Together Against Neighborhood Crime Everyday (S.T.A.N.C.E.), which was established by the United States Attorney's Office for the Northern District of Ohio in 2006, continues to be a PSN priority that brings law enforcement, community leaders, educators, faith-based organizations, medical professionals, and juvenile justice officials together to address law enforcement efforts, prevention strategies, and re-entry initiatives. Some examples of proposed ideas include: a coordinated effort with the Cleveland Division of Police and MetroHealth Hospital Systems (a Cleveland-area Level 1 Trauma Center) to utilize violence reduction efforts in emergency rooms to prevent retaliatory shootings; a Cleveland Division of Police-led homicide review effort that includes after-action meetings with stakeholders, including juvenile court representatives and social service providers, to identify areas for improved coordination to further increase the Division's solve rate; focused re-entry strategies, which include a new, U.S. Attorney's Office-led effort to provide soon-to-be-released inmates with information about federal firearms offenses and the potential penalties for illegally possessing a firearm or ammunition; and improved summer programming for at-risk youth.

b. **Have these solution(s) been implemented?**

Response: Yes.

4. **At your hearing, we briefly discussed the events related to the consent decree for Cleveland's police department. The Cleveland Consent Decree is implemented by a monitoring team. One member of the team recently resigned but later rejoined the team. Professor Hardaway said that she felt forced to resign after the city and the Department of Justice questioned her objectivity following comments she made on a radio show in April regarding systemic racism, Derek Chauvin, and George Floyd.**

The concerns were prompted by two statements she made on April 21, 2021. In response to the Ma'Khia Bryant shooting in Columbus, Ohio, Professor Hardaway tweeted:

> **Too many of y'all are super quick to voice your uninformed opinions justifying the Columbus police officers actions that killed young Miss Bryant. Y'all are as trigger happy as some of these people with badges. Please don't quit your day jobs**

In an interview that day about the Chauvin conviction, Professor Hardaway also stated:

> **I think it is so disingenuously obtuse, to continue to profess that all police officers aren't bad and that this case was about Mr. Chauvin. American policing as a system, is pathologically violent and particularly brutal in its interaction with black people, full stop, that's the end of the story.**

Hassan Aden, the leader of the monitoring team, told Professor Hardaway that she would be moved from her role objectively evaluating the police department's compliance with the consent decree to helping with the monitoring team's community outreach efforts. (Aden is the former Chief of Police of the Greenville Police Department in Greenville, North Carolina, and a veteran of the Alexandria Police Department in Alexandria, Virginia.) In reaching this decision, Aden said that he spoke with "the Department of Justice/U.S. Attorney's Office (DOJ)."

After Professor Hardaway's resignation, you released a statement saying, in part:

> **The importance of diversity of thought and experiences to the police reform process cannot be overstated . . . Professor Ayesha Bell Hardaway was an integral part of this dialogue, bringing a unique combination of local knowledge and legal expertise. Her presence on the Monitoring Team facilitated the progress and successes we have seen to date, and we were disappointed to learn of her resignation.**

a. **Did the monitoring team consult with you, another member of your office, or a separate division of the Justice Department before shifting Professor Hardaway's responsibilities to community outreach?**

Response: This monitoring team is a representative of the Court. It maintains an independent and neutral role in assessing compliance and advising the Court on matters related to the Consent Decree. In that role, the Monitor has, at times, provided the parties with a fair opportunity to be heard. As it relates to this matter, the Monitor issued a statement, the pertinent portion of which is set forth below:

When I became aware of the statements, I discussed the matter with the Department of Justice/US Attorney's Office (DOJ). Their position was a recognition that the monitoring team represents the Court and anything that potentially calls their neutral and impartial role into question, can distract from the important work being done. Such statements must be avoided because they give rise to the opportunity for the litigants to object to the validity of the consent decree. The DOJ advised me that no immediate action was necessary at that

point. However, as the monitor, it is my job to guard against any perceived conflict of interest by any member of the monitoring team, so as not to provide an opening for a legal challenge to the important work we are doing in Cleveland.

After careful consideration, I made the decision to assign Ayesha exclusively to the important work of leading our community engagement efforts-an area less focused on objectively assessing compliance at the moment, but one that provides the monitoring team with critical community insights and feedback. Ayesha decided to resign from the team rather than to continue to be involved in the process and work more deeply in matters involving the community.

b. **When members of a monitoring team make statements related to policing, do you believe it can be fair to raise concerns about the possibility of impartiality based on those statements?**

Response: Yes. Inquiries directed at ensuring the fair administration of justice are always appropriate.

5. **Do you agree with Judge Ketanji Brown Jackson when she said in 2013 that she did not believe in a "living constitution"?**

Response: I recognize that the term "living constitution" can be defined in different ways. I believe that the Constitution is an enduring document. If confirmed, I will faithfully adhere to the Constitution and Supreme Court and Sixth Circuit precedent.

6. **Should judicial decisions take into consideration principles of social "equity"?**

Response: In judicial proceedings, only the facts of each particular case and the law applicable to those facts should be considered.

7. **Is it ever appropriate for a judge to publicly profess political positions on campaigns and/or candidates?**

Response: Canon 5 of the Code of Conduct for United States Judges states that judges should refrain from political activity, including publicly endorsing or opposing a candidate for public office. I will adhere to this prohibition, if confirmed.

8. **What is the legal standard for "threats" in the Sixth Circuit?**

Response: In *United States v. Howard*, 947 F.3d 936 (6th Cir. 2020), the Sixth Circuit applied the Supreme Court's decision in *Elonis v. United States*, 575 U.S. 723 (2015) and held that a threat is "an expression of an intent to inflict loss or harm," and that a violation of 18 U.S.C. § 875(c) is supported if the government has proven that "(1) the

defendant sent a message in interstate commerce; (2) the defendant intended the message as a threat; and (3) a reasonable observer would view the message as a threat." *Id*. at 946-947 (emphasis omitted).

9. **What is the legal standard for self-defense in:**

   a. **Ohio?**

      Response: Establishing self-defense requires proof that the actor (1) was not at fault in creating the situation, (2) the defendant had a bona fide belief that he was in imminent danger of death or great bodily harm and that using force provided the only means of escaping the present danger, and (3) the defendant did not violate any duty to retreat or avoid the danger. *State v. Robbins*, 58 Ohio St. 2d 74 (1979).

   b. **The Sixth Circuit?**

      Response: Where an individual reasonably perceives imminent danger of death or serious bodily harm, and that deadly force is necessary to repel the danger, self-defense may be justified under the circumstances. *See United States v. Guyron*, 717 F.2d 1536 (6th Cir. 1983).

10. **Should a defendant's personal characteristics influence the punishment he or she receives?**

    Response: Title 18, United States Code, Section 3553(a) states the factors a Court must consider in determining an appropriate sentence. If confirmed, I would appropriately consider the factors identified by Congress and apply them to the facts and circumstances in each particular case.

11. **What is the legal basis for a nationwide injunction? What considerations would you consider as a district judge when deciding whether to grant one?**

    Response: I am aware that nationwide injunctions have been the subject of much debate. I am also aware that injunctions are generally regarded as an extraordinary remedy. If confirmed, I would faithfully adhere to the four-part analysis mandated in *Winter v. Natural Resources Defense Council*, 555 U.S. 7, 20 (2008), which is that the plaintiff seeking such relief must establish (1) a likelihood of success on the merits, (2) that he is likely to suffer irreparable harm should such relief be denied, (3) that the balance of equities tips in his favor, and (4) such an injunction is in the public interest. I would also comport with the procedural requirements set forth in Rule 65 of the Federal Rules of Civil Procedure.

12. **What legal standard would you apply in evaluating whether or not a regulation or proposed legislation infringes on Second Amendment rights?**

    Response: If confirmed, I would follow Supreme Court precedent set forth in *United States v. Heller*, 554 U.S. 570 (2008) and *McDonald v. City of Chicago*, 561 U.S. 742 (2010), as well as applicable Sixth Circuit precedent and any applicable statutes.

13. **What is implicit bias?**

    Response: It is my understanding that implicit bias refers to each person's potential for unconscious biases or prejudice.

14. **Is the federal judiciary affected by implicit bias?**

    Response: This is an important question for the judiciary and legislature to review and consider. If confirmed, I would ensure that every person who appeared before me was treated respectfully and fairly without bias or partiality.

15. **Who should respond to a domestic violence call where there is an allegation that the aggressor is armed—the police or a social worker?**

    Response: This is a decision best left to those responsible for implementing policy and enacting laws. If confirmed, I would apply the facts of each case to the applicable law and render a fair and impartial decision absent any consideration for my own personal views or opinions.

16. **How will Cleveland's recently passed Amendment 24 impact the relationship between police, social workers and victims?**

    Response: This is an important question. Because the Department of Justice is in active litigation with the City of Cleveland relating to matters of policing and community engagement, it would not be appropriate for me to speculate on the impact of Amendment 24. Further, as a judicial nominee who could be asked to preside over a matter related to Amendment 24, it would not be appropriate for me to respond to his particular question.

17. **In what situation does qualified immunity not apply to a law enforcement officer in Ohio?**

    Response: Qualified immunity protects government officials from suit when the challenged conduct did not violate clearly established statutory or constitutional rights of which a reasonable person would have known. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). In *Pearson v. Callahan*, the Supreme Court explained that the order for considering the two-pronged qualified immunity analysis, namely (1) whether the facts

alleged make out a finding that a constitutional right was violated, and (2) was the right clearly established at the time, is left to the discretion of lower courts based on the facts and circumstances presented in each case. 555 U.S. 223 (2009).

18. **Do parents have a constitutional right to direct the education of their children?**

Response: The Supreme Court has held that parents have a fundamental right to direct the upbringing and education of their children. *See Wisconsin v. Yoder*, 406 U.S. 205, 92 S. Ct. 1526 (1971) and *Meyer v. Nebraska*, 262 U.S. 390 (1923).

19. **Please answer the following questions yes or no. If you would like to include an additional narrative response, you may do so, but only after a yes or no answer:**

a. **Was *Brown v. Board of Education* correctly decided?**

Response: In order to preserve respect for the judicial process and to maintain public confidence in the independence of the judiciary, judicial nominees are not permitted to comment in a way that could be viewed as criticizing higher courts or having prejudged a particular matter. Whether or not I agree with a higher court's decision, I will faithfully apply the precedent.

An exception to this prohibition has been recognized, however, where the matter is so well settled that the central holding is neither the subject of debate nor likely to be raised in future litigation. This case is one such example. I believe that the Supreme Court's decision in this case was correctly decided.

b. **Was *Loving v. Virginia* correctly decided?**

Response: In order to preserve respect for the judicial process and to maintain public confidence in the independence of the judiciary, judicial nominees are not permitted to comment in a way that could be viewed as criticizing higher courts or having prejudged a particular matter. Whether or not I agree with a higher court's decision, I will faithfully apply the precedent.

An exception to this prohibition has been recognized, however, where the matter is so well settled that the central holding is neither the subject of debate nor likely to be raised in future litigation. This case is one such example. I believe that the Supreme Court's decision in this case was correctly decided.

c. **Was *Griswold v. Connecticut* correctly decided?**

Response: In order to preserve respect for the judicial process and to maintain public confidence in the independence of the judiciary, judicial nominees are not permitted to comment in a way that could be viewed as criticizing higher courts or

having prejudged a particular matter. Whether or not I agree with a higher court's decision, I will faithfully apply the precedent.

d. **Was *Roe v. Wade* correctly decided?**

Response: Please see my response to Question No. 19(c).

e. **Was *Planned Parenthood v. Casey* correctly decided?**

Response: Please see my response to Question No. 19(c).

f. **Was *Gonzales v. Carhart* correctly decided?**

Response: Please see my response to Question No. 19(c).

g. **Was *District of Columbia v. Heller* correctly decided?**

Response: Please see my response to Question No. 19(c).

h. **Was *McDonald v. City of Chicago* correctly decided?**

Response: Please see my response to Question No. 19(c).

i. **Was *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* correctly decided?**

Response: Please see my response to Question No. 19(c).

20. **Demand Justice is a progressive organization dedicated to "restor[ing] ideological balance and legitimacy to our nation's courts."**

a. **Has anyone associated with Demand Justice requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No.

b. **Are you currently in contact with anyone associated with Demand Justice, including, but not limited to: Brian Fallon, Christopher Kang, Tamara Brummer, Katie O'Connor, Jen Dansereau, Faiz Shakir, and/or Stasha Rhodes?**

Response: No.

c. **Have you ever been in contact with anyone associated with Demand Justice, including, but not limited to: Brian Fallon, Christopher Kang, Tamara Brummer, Katie O'Connor, Jen Dansereau, Faiz Shakir, and/or Stasha Rhodes?**

Response: No.

21. **The Alliance for Justice is a "national association of over 120 organizations, representing a broad array of groups committed to progressive values and the creation of an equitable, just, and free society."**

a. **Has anyone associated with Alliance for Justice requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No.

b. **Are you currently in contact with anyone associated with the Alliance for Justice, including, but not limited to: Rakim Brooks and/or Daniel L. Goldberg?**

Response: No.

c. **Have you ever been in contact with anyone associated with Demand Justice, including, but not limited to: Rakim Brooks and/or Daniel L. Goldberg?**

Response: No.

22. **Arabella Advisors is a progressive organization founded "to provide strategic guidance for effective philanthropy" that has evolved into a "mission-driven, Certified B Corporation" to "increase their philanthropic impact."**

a. **Has anyone associated with Arabella Advisors requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No.

b. **Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund.**

Response: Please see response to Question 22(a).

c. **Are you currently in contact with anyone associated with Arabella Advisors? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.**

Response: No.

d. **Have you ever been in contact with anyone associated with Arabella Advisors? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.**

Response: No.

23. **The Open Society Foundations is a progressive organization that "work[s] to build vibrant and inclusive democracies whose governments are accountable to their citizens."**

a. **Has anyone associated with Open Society Fund requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No.

b. **Are you currently in contact with anyone associated with the Open Society Foundations?**

Response: No.

c. **Have you ever been in contact with anyone associated with the Open Society Foundations?**

Response: No.

24. **Fix the Court is a "non-partisan, 501(C)(3) organization that advocates for non-ideological 'fixes' that would make the federal courts, and primarily the U.S. Supreme Court, more open and more accountable to the American people."**

a. **Has anyone associated with Fix the Court requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No.

b. **Are you currently in contact with anyone associated with Fix the Court, including but not limited to: Gabe Roth, Tyler Cooper, Dylan Hosmer-Quint and/or Mackenzie Long?**

Response: No.

c. **Have you ever been in contact with anyone associated with Fix the Court, including but not limited to: Gabe Roth, Tyler Cooper, Dylan Hosmer-Quint and/or Mackenzie Long?**

Response: No.

25. **Please describe the selection process that led to your nomination to be a United States District Judge, from beginning to end (including the circumstances that led to your nomination and the interviews in which you participated).**

Response: In March 2021, I submitted my application to the bipartisan judicial selection commission established by Senator Brown and Senator Portman. On May 21, I was interviewed by the commission. On June 4, I interviewed with members of Senator Brown's staff. On June 7, I interviewed with Senator Portman. On June 23, I interviewed with Senator Brown. On July 13, I interviewed with representatives of the White House Counsel's Office. On September 30, President Biden nominated me for the position of United States District Judge in the Northern District of Ohio.

26. **During your selection process did you talk with any officials from or anyone directly associated with the organization Demand Justice, or did anyone do so on your behalf? If so, what was the nature of those discussions?**

Response: No.

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

Response: No.

28. **During your selection process, did you talk with any officials from or anyone directly associated with Arabella Advisors, or did anyone do so on your behalf? If so, what was the nature of those discussions? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.**

Response: No.

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

    Response: No.

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

    Response: I interviewed with White House staff on July 13, 2021. Since being nominated for this position, I have had multiple conversations with White House staff and those Justice Department representatives assigned to nominations regarding the vetting process and the Senate Judiciary Committee process.

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

    Response: I received the questions on November 24 and immediately began drafting responses. I submitted draft responses to the Office of Legal Policy, received feedback, and then finalized my answers for submission.

Senator Mike Lee
Questions for the Record
Bridget Brennan, District Judge Nominee for the Northern District of Ohio

1. How would you describe your judicial philosophy?

Response: If confirmed, my judicial approach would begin with recognizing the limited role of the judiciary, which is resolving only the case or controversy before the Court absent any personal views or opinions; keeping an open mind and respectfully listening to the parties' viewpoints and arguments; carefully understanding the facts in the record and diligently researching the applicable law; fairly, neutrally, and dispassionately applying the law to the facts in that case; and timely and clearly issuing written opinions so that the parties understand the court's ruling, and may seek meaningful appellate review, if they choose to do so.

2. What sources would you consult when deciding a case that turned on the interpretation of a federal statute?

Response: Controlling Supreme Court or Sixth Circuit precedent would be the first source for determining matters of statutory interpretation. Absent controlling precedent, I would look to the text of the statute to understand the original and plain meaning of the terms Congress selected. If the terms used are clear and unambiguous, extratextual considerations would not apply. If ambiguity remained, however, I would utilize the interpretative tools recognized by the Supreme Court and Sixth Circuit, including the manner in which the term is used within the statute; persuasive authority analyzing the terms disputed in that matter or disputes concerning the same terms in analogous statutes; canons of construction; dictionary definitions; and, if ambiguity remained, legislative history.

3. What sources would you consult when deciding a case that turned on the interpretation of a constitutional provision?

Response: I would begin by consulting Supreme Court precedent to determine if the disputed provision has already been considered or, in the event the dispute concerns a new or novel claim, whether the Supreme Court has already stated the applicable test for resolving such a claim. *See Washington v. Glucksburg*, 521 U.S. 702 (1997). In the unlikely event that I was presented with a matter of first impression, I would look to the original and plain meaning of the text. If ambiguity remained, I would then refer to those tools recognized by the Supreme Court or Sixth Circuit Court of Appeals for constitutional interpretation.

4. What role do the text and original meaning of a constitutional provision play when interpreting the Constitution?

Response: Please see my response to Question 3.

5. How would you describe your approach to reading statutes? Specifically, how much weight do you give to the plain meaning of the text?

Response: The original and plain meaning of the text is the most probative evidence of Congress's intent. If an ambiguity remained, I would employ the process for statutory interpretation described in my response to Question 2.

a. Does the "plain meaning" of a statute or constitutional provision refer to the public understanding of the relevant language at the time of enactment, or does the meaning change as social norms and linguistic conventions evolve?

Response: The "plain meaning" of a term used in a statute or constitutional provision is the "ordinary meaning of its terms at the time of enactment." *Bostock v. Clayton Cty*., 140 S. Ct. 1731, 1738 (2020).

6. What are the constitutional requirements for standing?

Response: Constitutional standing contains three elements: injury in fact; causation; and redressability. Injury in fact is defined as the invasion of a legally protected interest which is concrete, particularized, actual and imminent, not conjectural or hypothetical. Causation requires proof that the connection between the injury alleged is fairly traceable to the challenged action and the defendant, and not resulting from conduct by a third party who is not before the court. Establishing redressability requires a likelihood that the injury will be redressed by a favorable opinion in that action; mere speculation will not suffice. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).

7. Do you believe Congress has implied powers beyond those enumerated in the Constitution? If so, what are those implied powers?

Response: The Supreme Court has recognized that Congress's constitutional authority to "make all Laws which shall be necessary and proper" extends to legislative action that is legitimate, appropriate, and within the spirit and scope of the Constitution. *McCullough v. Maryland*, 17 U.S. 316 (1819).

8. Where Congress enacts a law without reference to a specific Constitutional enumerated power, how would you evaluate the constitutionality of that law?

Response: The Supreme Court has explained that a permissive reading of Congress's authority stems from a general reluctance to invalidate the legislative actions of elected leaders, and that proper respect for a coordinate branch of government requires invalidating an act of Congress only if the lack of constitutional authority to pass the act in question is clearly demonstrated. *National Federation of Independent Business v. Sebelius*, 567 U.S. 519, 537-38 (2012), quoting *United States v. Harris*, 106 U.S. 629, 635 (1883). With this in mind, I would review other precedent addressing the challenged Congressional action as well as any standards the Supreme

Court or Sixth Circuit Court of Appeals has recognized are appropriate for evaluating the constitutionality of Congress's action.

9. Does the Constitution protect rights that are not expressly enumerated in the Constitution? Which rights?

Response: Yes. The Supreme Court has recognized that liberty interests protected by due process include certain unenumerated rights, such as the right to have children, *Skinner v. Oklahoma*, 316 U.S. 535 (1923); the right of parents to direct the upbringing of their children, *Meyer v. Nebraska*, 262 U.S. 390 (1923); the right to travel, *Kent v. Dulles*, 357 U.S. 116 (1958); freedom of association, *National Association for the Advancement of Colored People v. Alabama*, 357 U.S. 449 (1958); the right to marry, *Loving v. Virginia*, 388 U.S. 1 (1967); and the right to reproductive privacy, *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833 (1992).

10. What rights are protected under substantive due process?

Response: In its decision recognizing that the liberty guaranteed by the Fourteenth Amendment included a parent's right to direct the upbringing of their children, the Supreme Court identified other protected rights, including the right to contract, engage in any common occupations of life, acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of one's own conscience, enjoy long recognized privileges essential to the orderly pursuit of happiness by free men, and freedom from bodily restraint. *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923). In more recent years, the Supreme Court has employed the following two-step analysis for ascertaining whether other rights are protected by substantive due process: (1) is the right alleged so "deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty" that "neither justice nor liberty would exist if they were sacrificed," and (2) is the asserted fundamental liberty interest carefully described. *Washington v. Glucksburg*, 521 U.S. 702, 720-21 (1997).

11. If you believe substantive due process protects some personal rights such as a right to abortion, but not economic rights such as those at stake in *Lochner v. New York*, on what basis do you distinguish these types of rights for constitutional purposes?

Response: If confirmed, I will faithfully adhere to binding precedent regardless of any personal views or opinions I may have.

12. What are the limits on Congress's power under the Commerce Clause?

Response: Congress's Commerce Clause authority extends to (1) the use of the channels of interstate commerce; (2) instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from

intrastate activity; and (3) those activities having a substantial relation to interstate commerce, namely, those activities that substantially affect interstate commerce. *United States v. Lopez*, 514 U.S. 549, 558-59 (1995).

13. What qualifies a particular group as a "suspect class," such that laws affecting that group must survive strict scrutiny?

Response: The United States Supreme Court has recognized that race, national origin, religion, and alienage are suspect classifications. *Graham v. Richardson*, 403 U.S. 365, 371-72 (1971) (noting that classifications based on alienage, nationality and race are inherently suspect and subject to strict scrutiny); *City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976) (noting that race, religion, and alienage are inherently suspect distinctions).

A suspect class is one "saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process." *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 28 (1973).

14. How would you describe the role that checks and balances and separation of powers play in the Constitution's structure?

Response: The separation of powers provides for checks and balances by the co-equal branches of government. This ensures that no one branch of government assumes more authority than that which is provided by the Constitution.

15. How would you go about deciding a case in which one branch assumed an authority not granted it by the text of the Constitution?

Response: I would begin by reviewing Supreme Court and Sixth Circuit precedent. I would apply precedent as it relates to such an assertion of authority.

16. What role should empathy play in a judge's consideration of a case?

Response: A judge must neutrally and dispassionately apply the law to the facts in the record.

17. What's worse: Invalidating a law that is, in fact, constitutional, or upholding a law that is, in fact, unconstitutional?

Response: If confirmed to serve as a District Judge, I will recognize my obligation to uphold constitutional laws is equal to my obligation to invalidate those that are unconstitutional.

18. From 1789 to 1857, the Supreme Court exercised its power of judicial review to strike down federal statutes as unconstitutional only twice. Since then, the invalidation of federal statutes by the Supreme Court has become significantly more common. What do you believe accounts for this change? What are the downsides to the aggressive exercise of judicial review? What are the downsides to judicial passivity?

Response: I have neither studied nor had cause to review the Supreme Court's exercise of judicial review during different periods of time and cannot opine on any changes or trends. Aggressive exercise of judicial review may create an impression that elected representatives have been denied the ability to represent their constituents in matters of legislative or executive action. Judicial passivity, on the other hand, may create an impression that the judiciary is not ensuring that legislative and executive actions are constitutional.

19. How would you explain the difference between judicial review and judicial supremacy?

Response: "Judicial review" is the court's "province and duty … to say what the law is" and invalidate legislative or executive action if such action is in violation of the Constitution. *Marbury v. Madison*, 5 U.S. 137 (1803). "Judicial supremacy" is defined in Black's Law Dictionary as "[t]he doctrine that interpretations of the Constitution by the federal judiciary in the exercise of judicial review, esp. U.S. Supreme Court interpretations, are binding on the coordinate branches of the federal government and the states."

20. Abraham Lincoln explained his refusal to honor the Dred Scott decision by asserting that "If the policy of the Government upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the Supreme Court . . . the people will have ceased to be their own rulers, having to that extent practically resigned their Government into the hands of that eminent tribunal." How do you think elected officials should balance their independent obligation to follow the Constitution with the need to respect duly rendered judicial decisions?

Response: While elected officials are bound by judicial decisions, they also have the authority to enact laws that provide greater protections than those afforded in the Constitution as well as to expand on or clarify prior legislative action.

21. In Federalist 78, Hamilton says that the courts are the least dangerous branch because they have neither force nor will, but only judgment. Explain why that's important to keep in mind when judging.

Response: The will of the people, their voice in legislative action, policy decisions, or proactive measures, does not rest in the judiciary. The role of independent judicial

officers is to protect the rights and privileges of the people by ensuring that legislative and executive action is consistent with the constitutional authority granted to each.

22. As a district court judge, you would be bound by both Supreme Court precedent and prior circuit court precedent. What is the duty of a lower court judge when confronted with a case where the precedent in question does not seem to be rooted in constitutional text, history, or tradition and also does not appear to speak directly to the issue at hand?

Response: Lower court judges must apply controlling precedent. Where controlling precedent does not speak directly to the issue at hand, it may not be controlling. In that instance, the lower court judge would be required to apply the standards of interpretation set forth in response to Question 3, above.

23. In applying a precedent that has questionable constitutional underpinnings, should a lower court judge extend the precedent to cover new cases, or limit its application where appropriate and reasonably possible?

Response: Lower court judges must apply controlling precedent.

24. When sentencing an individual defendant in a criminal case, what role, if any, should the defendant's group identity(ies) (e.g., race, gender, nationality, sexual orientation or gender identity) play in the judges' sentencing analysis?

Response: Sentencing determinations are limited to the application of the specific factors set forth in 18 U.S.C. § 3553(a), after reviewing the advisory Sentencing Guidelines and any pertinent policy statements issued by the Sentencing Commission. Considerations such as those listed above are not permitted. *See Koon v. United States*, 518 U.S. 81, 93 (1996) (citing U.S.S.G. § 5H1.10 and recognizing that race is not a permissible factor); *United States v. Albaadani*, 863 F.3d 496, 504 (6th Cir. 2017) (national origin and alienage are not permissible factors).

25. The Biden Administration has defined "equity" as: "the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality." Do you agree with that definition? If not, how would you define equity?

Response: I am not familiar with this quote or the context in which it was made. As a judicial nominee, I recognize that, if confirmed, equal protection matters and matters of disparate treatment may come before me. I will faithfully adhere to the applicable law in each instance.

26. Is there a difference between "equity" and "equality?" If so, what is it?

Response: I understand that these terms are being discussed and debated among many members of society and, as a result, mean different things to different people. As a judicial nominee, I recognize that equal protection matters and matters of disparate treatment may come before me. If confirmed, I will faithfully adhere to the applicable law in each instance.

27. Should equity be taken into consideration in determining the outcome of a case?

Response: Please see response to Question 26.

28. Does the 14th Amendment's equal protection clause guarantee "equity" as defined by the Biden Administration (listed above in question 24)?

Response: The 14th Amendment refers to the "equal protection of the laws."

29. How do you define "systemic racism?"

Response: The term "systemic racism" is being discussed and debated among many members of society and, as a result, appears to mean different things to different people. If confirmed, I understand that my role will be to adjudicate the specific cases and controversies that come before me.

30. How do you define "critical race theory?"

Response: This is another term that, to my mind, is not clearly defined because it means different things to different people.

31. Do you distinguish "critical race theory" from "systemic racism," and if so, how?

Response: Please see responses to Questions 29 and 30.

Senator Ben Sasse
Questions for the Record
U.S. Senate Committee on the Judiciary
Hearing: "Nominations"
November 17, 2021
Ms. Bridget Meehan Brennan

Questions for all nominees:

1. **Since becoming a legal adult, have you participated in any events at which you or other participants called into question the legitimacy of the United States Constitution?**

   Response: No.

2. **Since becoming a legal adult, have you participated in any rallies, demonstrations, or other events at which you or other participants have willfully damaged public or private property?**

   Response: No.

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

   Response: If confirmed, my approach would begin with recognizing the limited role of the judiciary, which is to resolve only the case or controversy before the Court absent any personal views or opinions; keeping an open mind and respectfully listening to the parties' viewpoints and arguments; carefully understanding the facts in the record and diligently researching the applicable law; fairly, neutrally, and dispassionately applying the law to the facts in that case; and timely and clearly issuing written opinions so that the parties understand the court's ruling, and may seek meaningful appellate review, if they choose to do so.

4. **Would you describe yourself as an originalist?**

   Response: I do not subscribe to any particular judicial ideology, largely because the Supreme Court has not approached constitutional interpretation in the same manner. My role, if confirmed, would be to faithfully apply controlling Supreme Court or Sixth Circuit precedent, recognizing that in areas where originalism applied, like in *Crawford* and *Heller*, the original plain meaning of the constitutional provision would be controlling.

5. **Would you describe yourself as a textualist?**

   Response: To the extent "textualist" is defined as recognizing that statutory interpretations begin with the ordinary plain meaning of the term used at the time the

statute was enacted, and that extratextual considerations are not relevant when the term in question is unambiguous, then yes.

6. **Do you believe the Constitution is a "living" document whose precise meaning can change over time? Why or why not?**

   Response: I do not subscribe to "living constitutionalism." Instead, I recognize that applying core principles to modern-day circumstances, *e.g.* Fourth Amendment protections against unreasonable searches and seizures apply to the collection of cell-site location data, is evidence of the Constitution's enduring qualities.

7. **Please name the Supreme Court Justice or Justices appointed since January 20, 1953 whose jurisprudence you admire the most and explain why.**

   Response: There is no Justice whose jurisprudence I most admire. As a young girl, I was inspired by Justice Sandra Day O'Connor's pathbreaking role on the Supreme Court.

8. **Was Marbury v. Madison correctly decided?**

   Response: In order to preserve respect for the judicial process and to maintain public confidence in the independence of the judiciary, judicial nominees are not permitted to comment in a way that could be viewed as criticizing higher courts or having prejudged a particular matter. Whether or not I agree with a higher court's decision, I will faithfully apply the precedent.

   An exception to this prohibition has been recognized, however, where the matter is so well settled that the central holding is neither the subject of debate nor likely to be raised in future litigation. This case is one such example. I believe that the Supreme Court's decision in this case was correctly decided.

9. **Was Lochner v. New York correctly decided?**

   Response: In order to preserve respect for the judicial process and to maintain public confidence in the independence of the judiciary, judicial nominees are not permitted to comment in a way that could be viewed as criticizing higher courts or having prejudged a particular matter. That said, the Supreme Court's decision in *Lochner v. New York* was essentially abrogated by the Court's later decision in *West Coast Hotel Co. v. Parrish*. Whether or not I agree with a higher court's decision, I will faithfully apply relevant, binding precedent.

10. **Was Brown v. Board of Education correctly decided?**

    Response: In order to preserve respect for the judicial process and to maintain public confidence in the independence of the judiciary, judicial nominees are not permitted to comment in a way that could be viewed as criticizing higher courts or having prejudged a

particular matter. Whether or not I agree with a higher court's decision, I will faithfully apply the precedent.

An exception to this prohibition has been recognized, however, where the matter is so well settled that the central holding is neither the subject of debate nor likely to be raised in future litigation. This case is one such example. I believe that the Supreme Court's decision in this case was correctly decided.

11. Was Bolling v. Sharpe correctly decided?

Response: Please see my response to Question 10.

12. Was Cooper v. Aaron correctly decided?

Response: In order to preserve respect for the judicial process and to maintain public confidence in the independence of the judiciary, judicial nominees are not permitted to comment in a way that could be viewed as criticizing higher courts or having prejudged a particular matter. Whether or not I agree with a higher court's decision, I will faithfully apply the precedent.

13. Was Mapp v. Ohio correctly decided?

Response: Please see my response to Question 12.

14. Was Gideon v. Wainwright correctly decided?

Response: Please see my response to Question 10.

15. Was Griswold v. Connecticut correctly decided?

Response: Please see my response to Question 12.

16. Was South Carolina v. Katzenbach correctly decided?

Response: Please see my response to Question 12.

17. Was Miranda v. Arizona correctly decided?

Response: Please see my response to Question 12.

18. Was Katzenbach v. Morgan correctly decided?

Response: Please see my response to Question 12.

19. Was Loving v. Virginia correctly decided?

Response: Please see my response to Question 10.

20. Was Katz v. United States correctly decided?

Response: Please see my response to Question 12.

21. Was Roe v. Wade correctly decided?

Response: Please see my response to Question 12.

22. Was Romer v. Evans correctly decided?

Response: Please see my response to Question 12.

23. Was United States v. Virginia correctly decided?

Response: Please see my response to Question 12.

24. Was Bush v. Gore correctly decided?

Response: Please see my response to Question 12.

25. Was District of Columbia v. Heller correctly decided?

Response: Please see my response to Question 12.

26. Was Crawford v. Marion County Election Board correctly decided?

Response: Please see my response to Question 12.

27. Was Boumediene v. Bush correctly decided?

Response: Please see my response to Question 12.

28. Was Citizens United v. Federal Election Commission correctly decided?

Response: Please see my response to Question 12.

29. Was Shelby County v. Holder correctly decided?

Response: Please see my response to Question 12.

30. Was United States v. Windsor correctly decided?

Response: Please see my response to Question 12.

31. Was Obergefell v. Hodges correctly decided?

Response: Please see my response to Question 12.

32. In the absence of controlling Supreme Court precedent, what substantive factors determine whether it is appropriate for appellate court to reaffirm its own precedent that conflicts with the original public meaning of the Constitution?

Response: If confirmed, I would be bound by controlling Sixth Circuit precedent regardless of whether the precedent conflicted with the original public meaning of the Constitution. Only the Supreme Court or court of appeals sitting *en banc* can judicially overrule a prior panel's decision.

33. In the absence of controlling Supreme Court precedent, what substantive factors determine whether it is appropriate for an appellate court to reaffirm its own precedent that conflicts with the original public meaning of the text of a statute?

Response: If confirmed, I would be bound by controlling Sixth Circuit precedent regardless of whether the precedent conflicted with the original public meaning of the text of a statute. Only the Supreme Court or court of appeals sitting *en banc* can judicially overrule a prior panel's decision.

34. What role should extrinsic factors not included within the text of a statute, especially legislative history and general principles of justice, play in statutory interpretation?

Response: Statutory interpretation begins with reviewing the plain language of the statute to understand the original and plain meaning of the terms Congress selected. If the text of the statute is clear and its terms, given the meaning they would have been given when the statute was enacted, is unambiguous, extratextual factors would not be considered. If the plain language of the statute is not clear, then I would utilize the interpretative tools recognized by the Supreme Court and Sixth Circuit, which are the manner in which the term is used within the statute; persuasive authority analyzing the terms in dispute or disputes concerning the same terms in analogous matters; canons of construction; dictionary definitions; and, if ambiguity remained, legislative history. Any general principles of justice or personal views I may have would not be considered

35. If defendants of a particular minority group receive on average longer sentences for a particular crime than do defendants of other racial or ethnic groups, should that disparity factor into the sentencing of an individual defendant? If so, how so?

Response: Sentencing determinations are limited to the application of the specific factors set forth in 18 U.S.C. § 3553(a), after reviewing the advisory Sentencing Guidelines and any pertinent policy statements issued by the Sentencing Commission. Considerations such as race, national origin, and alienage are not permitted. *See Koon v. United States*, 518 U.S. 81, 93 (1996) (citing U.S.S.G. § 5H1.10 and recognizing that race is not a

permissible factor); *United States v. Albaadani*, 863 F.3d 496, 504 (6th Cir. 2017) (national origin and alienage are not permissible factors).

Questions from Senator Thom Tillis
for Bridget Meehan Brennan
Nominee to be United States District Judge for the Northern District of Ohio

1. **Do you believe that a judge's personal views are irrelevant when it comes to interpreting and applying the law?**

   Response: Yes.

2. **What is judicial activism? Do you consider judicial activism appropriate?**

   Response: I understand the term judicial activism to mean rendering a decision that is based, in whole or in part, on the judge's personal preferences or personal beliefs. This would not be appropriate. A judge's sworn obligation is to faithfully and impartially perform her duties under the Constitution and laws of the United States absent any consideration for personal preferences or personal beliefs.

3. **Do you believe impartiality is an aspiration or an expectation for a judge?**

   Response: Impartiality is an expectation and a sworn obligation.

4. **Should a judge second-guess policy decisions by Congress or state legislative bodies to reach a desired outcome?**

   Response: No.

5. **Does faithfully interpreting the law sometimes result in an undesirable outcome? How, as a judge, do you reconcile that?**

   Response: Having served as a federal prosecutor for 14 years, I know firsthand that adhering to the law may result in undesirable or unpopular outcomes. If confirmed, I would remain committed to the rule of law and its fair and impartial application to the facts in the record.

6. **Should a judge interject his or her own politics or policy preferences when interpreting and applying the law?**

   Response. No.

7. **What will you do if you are confirmed to ensure that Americans feel confident that their Second Amendment rights are protected?**

Response: If confirmed, I will faithfully adhere to the Constitution, controlling precedent, including the Supreme Court's decisions in *United States v. Heller*, 554 U.S. 570 (2008) and *McDonald v. City of Chicago*, 561 U.S. 742 (2010), and applicable statutes.

8. **How would you evaluate a lawsuit challenging a Sheriff's policy of not processing handgun purchase permits? Should local officials be able to use a crisis, such as COVID-19 to limit someone's constitutional rights? In other words, does a pandemic limit someone's constitutional rights?**

Response: As a judicial nominee, it would not be appropriate for me to suggest how I may rule based on a proposed set of facts. I remain mindful of my obligation to avoid even the appearance that I have prejudged a matter. If confirmed, I would faithfully apply controlling precedent, including the applicable level of judicial scrutiny, to the facts before me.

9. **What process do you follow when considering qualified immunity cases, and under the law, when must the court grant qualified immunity to law enforcement personnel and departments?**

Response: Qualified immunity protects government officials from suit when the challenged conduct did not violate clearly established statutory or constitutional rights of which a reasonable person would have known. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). In *Pearson v. Callahan*, the Supreme Court explained that the order for considering the two-pronged qualified immunity analysis, namely (1) whether the facts alleged make out a finding that a constitutional right was violated, and (2) was the right clearly established at the time, is left to the discretion of lower courts based on the facts and circumstances presented in each case. 555 U.S. 223 (2009).

10. **Do you believe that qualified immunity jurisprudence provides sufficient protection for law enforcement officers who must make splitsecond decisions when protecting public safety?**

Response: If confirmed, I would apply the qualified immunity standard set forth by the Supreme Court. Understanding that this is a matter of current debate, should the qualified immunity standard change, either by a later Supreme Court decision or congressional action, I would faithfully adhere to the applicable law.

11. **What do you believe should be the proper scope of qualified immunity protections for law enforcement?**

Response: Please see response to Question 10.

12. **Throughout the past decade, the Supreme Court has repeatedly waded into the area of patent eligibility, producing a series of opinions in cases that have only muddled the standards for what is patent eligible. The current state of eligibility jurisprudence is in abysmal shambles. What are your thoughts on the Supreme Court's patent eligibility jurisprudence?**

Response: As a federal prosecutor for the past 14 years, patent law is an area that I am less familiar with. If confirmed, and if a case involving patents and patent eligibility came before me, I can assure you that I would work diligently to research applicable law, including Supreme Court precedent, and do my best to apply that precedent.

13. **How would you apply current patent eligibility jurisprudence to the following hypotheticals. Please avoid giving non-answers and actually analyze these hypotheticals.**

a. **ABC Pharmaceutical Company develops a method of optimizing dosages of a substance that has beneficial effects on preventing, treating or curing a disease or condition for individual patients, using conventional technology but a newly-discovered correlation between administered medicinal agents and bodily chemicals or metabolites. Should this invention be patent eligible?**

Response: As a judicial nominee, it would not be appropriate for me to suggest how I may rule based on a proposed set of facts. I remain mindful of my obligation to avoid even the appearance that I have prejudged a matter. If confirmed, I would faithfully apply controlling precedent to the discrete facts before me.

b. **FinServCo develops a valuable proprietary trading strategy that demonstrably increases their profits derived from trading v commodities. The strategy involves a new application of statistical methods, combined with predictions about how trading markets behave that are derived from insights into human psychology. Should FinServCo's business method standing alone be eligible? What about the business method as practically applied on a computer?**

Response: Please see my response to Question 13a.

c. **HumanGenetics Company wants to patent a human gene or human gene fragment as it exists in the human body. Should that be patent eligible? What if HumanGenetics Company wants to patent a human gene or fragment that contains sequence alterations provided by an engineering process initiated by humans that do not otherwise exist in nature? What if the engineered**

alterations were only at the end of the human gene or fragment and merely removed one or more contiguous elements?

Response: Please see my response to Question 13a.

d. **BetterThanTesla ElectricCo develops a for billing customer for charging electric cars. The system employs conventional charging technology and conventional computing technology, but there was no previous system combining computerized billing with electric car charging. Should BetterThanTesla's billing system for charging be patent eligible standing alone? What about when it explicitly claims charging hardware?**

Response: Please see my response to Question 13a.

e. **Natural Laws and Substances, Inc. specializes in isolating natural substances and providing them as products to consumers. Should the isolation of a naturally occurring substance other than a human gene be patent eligible? What about if the substance is purified or combined with other substances to produce an effect that none of the constituents provide alone or in lesser combinations?**

Response: Please see my response to Question 13a.

f. **A business methods company, FinancialServices Troll, specializes in taking conventional FinancialServices Troll, specializes in taking conventional legal transaction methods or systems and implementing them through a computer process or artificial intelligence. Should such implementations be patent eligible? What if the implemented method actually improves the expected result by, for example, making the methods faster, but doesn't improve the functioning of the computer itself? If the computer or artificial intelligence implemented system does actually improve the expected result, what if it doesn't have any other meaningful limitations?**

Response: Please see my response to Question 13a.

g. **BioTechCo discovers a previously unknown relationship between a genetic mutation and a disease state. No suggestion of such a relationship existed in the prior art. Should BioTechCo be able to patent the gene sequence corresponding to the mutation? What about the correlation between the mutation and the disease state standing alone? But, what if BioTech Co invents a new, novel, and nonobvious method of diagnosing the disease state by means of testing for the gene sequence and the method requires at least one step that involves the manipulation and transformation of physical**

subject matter using techniques and equipment? Should that be patent eligible?

Response: Please see my response to Question 13a.

h. **Assuming BioTechCo's diagnostic test is patent eligible, should there exist provisions in law that prohibit an assertion of infringement against patients receiving the diagnostic test? In other words, should there be a testing exemption for the patient health and benefit? If there is such an exemption, what are its limits?**

Response: Please see my response to Question 13a.

i. **Hantson Pharmaceuticals develops a new chemical entity as a composition of matter that proves effective in treating TrulyTerribleDisease. Should this new chemical entity be patent eligible?**

Response: Please see my response to Question 13a.

j. **Stoll Laboratories discovers that superconducting materials superconduct at much higher temperatures when in microgravity. The materials are standard superconducting materials that superconduct at lower temperatures at surface gravity. Should Stoll Labs be able to patent the natural law that superconductive materials in space have higher superconductive temperatures? What about the space applications of superconductivity that benefit from this effect?**

Response: Please see my response to Question 13a.

14. **Based on the previous hypotheticals, do you believe the current jurisprudence provides the clarity and consistency needed to incentivize innovation? How would you apply the Supreme Court's ineligibility tests—laws of nature, natural phenomena, and abstract ideas—to cases before you?**

Response: Please see my response to Question 13a.

15. **Copyright law is a complex area of law that is grounded in our constitution, protects creatives and commercial industries, and is shaped by our cultural values. It has become increasingly important as it informs the lawfulness of a use of digital content and technologies.**

a. **What experience do you have with copyright law?**

Response: To the best of my recollection, I conducted legal research on copyright matters while I was an associate at Baker Hostetler.

b. **Please describe any particular experiences you have had involving the Digital Millennium Copyright Act.**

Response: I do not recall participating in any matter involving the Digital Millennium Copyright Act.

c. **What experience do you have addressing intermediary liability for online service providers that host unlawful content posted by users?**

Response: None.

d. **What experience do you have with First Amendment and free speech issues? Do you have experience addressing free speech and intellectual property issues, including copyright?**

Response: While an associate at Baker Hostetler, I assisted in First Amendment litigation, primarily defending newspapers and television stations in defamation suits. I do not recall any First Amendment matter that included intellectual property or copyright issues.

16. **The legislative history of the Digital Millennium Copyright Act reinforces the statutory text that Congress intended to create an obligation for online hosting services to address infringement even when they do not receive a takedown notice. However, the Copyright Office recently reported courts have conflated statutory obligations and created a "high bar" for "red flag knowledge, effectively removing it from the statute..." It also reported that courts have made the traditional common law standard for "willful blindness" harder to meet in copyright cases.**

a. **In your opinion, where there is debate among courts about the meaning of legislative text, what role does or should Congressional intent, as demonstrated in the legislative history, have when deciding how to apply the law to the facts in a particular case?**

Response: Controlling Supreme Court or Sixth Circuit precedent would be the first source for determining matters of statutory interpretation. Absent controlling precedent, I would look to the text of the statute to understand the original and plain meaning of the terms Congress selected. If the terms used are clear and unambiguous, extratextual considerations would not apply. If ambiguity remained, however, I would utilize the interpretative tools recognized by the Supreme Court and Sixth Circuit, including the manner in which the term is used

within the statute; persuasive authority analyzing the terms disputed in that matter or disputes concerning the same terms in analogous statutes; canons of construction; dictionary definitions; and, if ambiguity remained, legislative history.

b. **Likewise, what role does or should the advice and analysis of the expert federal agency with jurisdiction over an issue (in this case, the U.S. Copyright Office) have when deciding how to apply the law to the facts in a particular case?**

Response: If confirmed, I would faithfully apply Supreme Court and Sixth Circuit precedent setting forth the appropriate weight a district court should give to agency determinations, advice, or statements.

c. **Do you believe that awareness of facts and circumstances from which copyright infringement is apparent should suffice to put an online service provider on notice of such material or activities, requiring remedial action?**

Response: As a judicial nominee, it would not be appropriate for me to suggest how I may rule based on a proposed set of facts. I remain mindful of my obligation to avoid even the appearance that I have prejudged a matter. If confirmed, I would faithfully apply controlling precedent to the discrete facts before me.

17. **The scale of online copyright infringement is breathtaking. The DMCA was developed at a time when digital content was disseminated much more slowly and there was a lot less infringing material online.**

a. **How can judges best interpret and apply to today's digital environment laws like the DMCA that were written before the explosion of the internet, the ascension of dominant platforms, and the proliferation of automation and algorithms?**

Response: Precedent always controls. Even in developing areas, a district court is bound to apply precedent to the best of its ability. Should Congress determine that current law fails to keep pace with innovation or technological advancements and decide to pass a new law, that new law would control and the district court would then apply the statute to the facts in each case.

b. **How can judges best interpret and apply prior judicial opinions that relied upon the then-current state of technology once that technological landscape has changed?**

Response: Please see my response to Question 17a.

18. **To prevent the possibility of judge-shopping by allowing patent litigants to select a single-judge division in which their case will be heard, would you support a local rule that requires all patent cases to be assigned randomly to judges across the district, regardless of which division the judge sits in?**

Response: The Northern District of Ohio has two Divisions, Eastern and Western, both of which have multiple judges receiving random case assignments. Such a local rule would not be applicable in the District to which I have been nominated to serve.

19. **In some judicial districts, plaintiffs are allowed to request that their case be heard within a particular division of that district. When the requested division has only one judge, these litigants are effectively able to select the judge who will hear their case. In some instances, this ability to select a specific judge appears to have led to individual judges engaging in inappropriate conduct to attract certain types of cases or litigants.**

a. **Do you think it is ever appropriate for judges to engage in "forum selling" by proactively taking steps to attract a particular type of case or litigant?**

Response: I am not familiar with "forum selling." In the Northern District of Ohio, matters are randomly assigned within the Eastern and Western Divisions. Both Divisions have multiple judges receiving random case assignments.

b. **If so, please explain your reasoning. If not, do you commit not to engage in s such conduct?**

Response: Please see my response to Question 19a.

20. **I have expressed concerns about the fact that nearly one quarter of all the patent cases filed in the U.S. are assigned to just one of the more than 600 district court judges in the country.**

a. **Do you see "judge shopping" and "forum shopping" as a problem in litigation?**

Response: In the Northern District of Ohio, matters are randomly assigned within the Eastern and Western Divisions. Both Divisions have multiple judges

receiving random case assignments. If confirmed to serve in the Northern District of Ohio, such one-judge division concerns would not be applicable. Additionally, as a judicial nominee, it would not be appropriate for me to state a personal opinion that could be viewed as critical of decisions made by other courts.

b. **If so, do you believe that district court judges have a responsibility not to encourage such conduct?**

Response: Due to the makeup of the District in which I have served and hope to serve as a District Judge, such one-judge division shopping would not occur. Additionally, as a judicial nominee, it would not be appropriate for me to state a personal opinion that could be viewed as critical of decisions made by other courts.

21. **In just three years, the Court of Appeals for the Federal Circuit has granted no fewer than 19 mandamus petitions ordering a particular sitting district court judge to transfer cases to a different judicial district. The need for the Federal Circuit to intervene using this extraordinary remedy so many times in such a short period of time gives me grave concerns.**

a. **What should be done if a judge continues to flaunt binding case law despite numerous mandamus orders?**

Response: This important question would be resolved by the District's Chief Judge, Circuit Judicial Council, or Congress. If confirmed, I would honor the rule of law and faithfully adhere to the Constitution, binding precedent, and governing statutes.

b. **Do you believe that some corrective measure beyond intervention by an appellate court is appropriate in such a circumstance?**

Response: Please see my response to Question 21a.

22. **When a particular type of litigation is overwhelmingly concentrated in just one or two of the nation's 94 judicial districts, does this undermine the perception of fairness and of the judiciary's evenhanded administration of justice?**

Response: If confirmed, I would faithfully apply venue statutes and controlling precedent absent any personal views I may have.

a. **If litigation does become concentrated in one district in this way, is it appropriate to inquire whether procedures or rules adopted in that district have biased the administration of justice and encouraged forum shopping?**

Response: Inquiries directed at ensuring the fair administration of justice are always appropriate.

23. **Mandamus is an extraordinary remedy that the court of appeals invokes against a district court only when the petitioner has a clear and indisputable right to relief and the district judge has clearly abused his or her discretion. Nearly every issuance of mandamus may be viewed as a rebuke to the district judge, and repeated issuances of mandamus relief against the same judge on the same issue suggest that the judge is ignoring the law and flouting the court's orders.**

a. **If a single judge is repeatedly reversed on mandamus by a court of appeals on the same issue within a few years' time, how many such reversals do you believe must occur before an inference arises that the judge is behaving in a lawless manner?**

Response: This important question would be resolved by the District's Chief Judge, Circuit Judicial Council, or Congress. If confirmed, I would honor the rule of law and faithfully adhere to the Constitution, binding precedent, and governing statutes.

b. **Would five mandamus reversals be sufficient? Ten? Twenty?**

Response: Please see my response to Question 23a.