Senator Chuck Grassley, Ranking Member
Questions for the Record
Judge David Estudillo
Nominee to be United States District Judge for the Western District of Washington

1. **During your campaign for re-election, you talked about "Eastern Washington values." I think those are good values to have. But you are nominated to serve in the Western District of Washington. Do you believe the Western part of Washington State shares the same values as Eastern Washington?**

   Response: Yes, I believe the entire State of Washington shares the same values. By way of background, I attended both undergraduate and law school at the University of Washington in Seattle, Washington. I also lived and practiced law in Seattle from 2002 to 2012. When I moved to the Eastern side of the state, I continued to maintain a law office in Western Washington and continued to practice law in Western Washington, until I became a state court judge in 2015.

2. **Do you believe property damage caused during rioting should be prosecuted to the fullest extent of the law?**

   Response: I believe decisions pertaining to the filing of criminal charges against a person fall within the authority of the executive branch of government. As a sitting state court judge, and as a judicial nominee, it would be inappropriate for me to express opinions about when and under what circumstances a state or federal prosecutor should file and prosecute criminal charges.

3. **I want to talk about your decade of immigration law work. I saw you didn't provide specifics about any of your cases due to privacy concerns for your clients, but I think the Committee needs to know more about such a significant section of your legal career.**

   a. **Can you talk generally about the different types of cases and work you did in the immigration context?**

      Response: I am unable to provide specific detail about any former immigration client because immigration records are not public records, and absent authority from a specific client to discuss their immigration history, I am not authorized to discuss any former client's immigration history.

      I represented clients in removal proceedings before the Seattle and Tacoma Immigration Courts. My scope of representation was to investigate and fully understand a client's immigration history, to research and understand the legal basis for the initiation of removal proceedings, to research and understand potential legal avenues to obtain relief from removal, to advise my clients of their legal options and the potential obstacles to obtaining relief, and to advance appropriate forms of relief within the bounds of the law before the Immigration

Court as authorized by my clients. I also represented clients on appeal to the Board of Immigration Appeals. On behalf of different clients, I advanced claims for asylum, withholding of removal, Convention Against Torture Act, cancellation of removal for lawful permanent residents and for non-lawful permanent residents, temporary protected status, U-Visa, and adjustment of status based on an approved immigrant visa petition. I prepared all filings for the Immigration Court, appeared at pre-trial proceedings (Master Calendar Hearings), and represented clients during the administrative trials (Individual Merits Hearings) before an Immigration Court judge.

I also represented clients before United States Citizen and Immigration Services. I prepared and filed petitions for naturalization, temporary protected status, U-visa, family-based immigrant visa petitions, adjustment of status based on an approved immigrant visa petition, immigrant visa waivers for unlawful presence, and employment authorization. I prepared and filed all forms and interacted with United States Citizen and Immigration Services on behalf of my clients, and attended all immigration interviews with my clients.

I also represented clients in consular processing matters based on approved immigrant visa petitions and waivers for unlawful presence. I would prepare and file all forms necessary for consular processing and for the consular interview. I would communicate with the Department of State National Visa Center as well as individual consular embassies to ensure all necessary documents and information was provided to secure an approved immigrant visa on behalf of my clients.

b. When it comes to defending immigrants in removal proceedings, some times that is because they are charged with crimes, is that correct?

Response: Yes. Under the Immigration and Nationality Act, certain criminal conduct can form the basis for the initiation of removal proceedings.

c. Did you defend any clients in removal proceedings charged with violent crimes or crimes of moral turpitude? Which crimes?

Response: Some of the clients I represented were placed in removal proceedings because the Government asserted that he or she had been convicted of a crime involving a crime of violence or a crime involving moral turpitude. Those cases depended, in large part, on whether the elements of the specific crime the person was convicted of met the specific definition of a crime of violence or a crime involving moral turpitude as defined in the Immigration and Nationality Act.

4. Under the Supreme Court's First Amendment jurisprudence, can someone shout "fire" in a crowded theater?

Response: In *Brandenburg v. Ohio*, 395 U.S. 444 (1969), the Supreme Court identified "that the constitutional guarantees of free speech and free press do not permit a State to

forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." 395 U.S. at 447. Accordingly, the State potentially may prohibit a person from yelling fire in a crowded theater if such speech "is directed to inciting or producing imminent lawless action and is likely to incite or produce such action."

5. Do you believe in a "living constitution?"

Response: I believe the Constitution is an enduring document that is meant to apply to our government and society over time. Because I am a state court judge, and a judicial nominee, I must, and will, follow all Supreme Court precedent interpreting and applying the Constitution.

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

Response: Issuance of a preliminary injunction is governed by Federal Rules of Civil Procedure, Rule 65. "A preliminary injunction is a matter of equitable discretion and is an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *California v. Azar*, 911 F.3d 558, 575 (9th Cir. 2018) (internal quotation marks omitted). "Crafting a preliminary injunction is an exercise of discretion and judgment, often dependent as much on the equities of a given case as the substance of the legal issues it presents." *Id*. at 582 (internal quotation marks omitted). "Although 'there is no bar against ... nationwide relief in federal district court or circuit court,' such broad relief must be '*necessary* to give prevailing parties the relief to which they are entitled.'" *Id*. "[N]ationwide injunctive relief may be inappropriate where a regulatory challenge involves important or difficult questions of law, which might benefit from development in different factual contexts and in multiple decisions by the various courts of appeals." *Id*. at 583 (internal quotation marks omitted). If presented with a request for a nationwide injunction, I would carefully review the facts presented, carefully review the legal arguments advanced by each litigant, and carefully research and review any Supreme Court or Ninth Circuit precedent on the issuance of injunctions and the underlying subject matter before me.

7. What level of scrutiny applies to a Second Amendment challenge in the Western District of Washington?

Response: In evaluating firearm regulations, the Ninth Circuit requires courts to first ask "if the challenged law affects conduct that is protected by the Second Amendment" based on the "historical understanding of the scope of the right." *Young v. Hawaii*, 992 F.3d 765, 783 (9th Cir. 2021) (internal quotation marks omitted). Protections afforded by the Second Amendment are not implicated if there is evidence that the subjects of the

regulations "have been the subject of longstanding, accepted regulation" or if the regulation "falls within the 'presumptively lawful regulatory measures' that *Heller* identified." *Id*. "If the challenged restriction burdens conduct protected by the Second Amendment", a court "move[s] to the second step of the analysis and determine[s] the appropriate level of scrutiny." *Id*. at 784. If the regulation is one that "implicates the core of the Second Amendment right and severely burdens that right" it receives strict scrutiny. *Id*. If rights under the Second Amendment "are affected in some lesser way," intermediate scrutiny is applied. *Id*.

8. Does climate change exist?

Response: As a sitting state court judge, and a judicial nominee, any opinion I may have on this issue is irrelevant as I am obligated to follow all Supreme Court and Ninth Circuit precedent on this issue.

9. Does smoking cause cancer?

Response: As a sitting state court judge, and a judicial nominee, any opinion I may have on this issue is irrelevant as I am obligated to follow all Supreme Court and Ninth Circuit precedent on this issue.

10. Does human life begin at conception?

Response: As a sitting state trial court judge, and a judicial nominee, any opinion I may have on this issue is irrelevant as I am obligated to follow all Supreme Court and Ninth Circuit precedent on this issue.

11. Please explain, with detail, the process by which you became a district-court nominee.

Response: On January 4, 2021, I submitted my application to the bipartisan Judicial Merit Selection Committee created by Senators Maria Cantwell and Patty Murray in response to their call for applications for the position of United States District Court Judge for the Western District of Washington. On February 11, 2021, I interviewed with the 10-member Judicial Merit Selection Committee. On February 24, 2021, I interviewed with staff from Senator Cantwell's office and separately interviewed with staff from Senator Murray's office. On March 8, 2021, I interviewed with Senator Murray by telephone. After this interview, Senator Murray's Senior Counsel informed me my name was being submitted to the White House for further consideration. On March 9, 2021, I interviewed with attorneys from the White House Counsel's Office. Officials from the Office of Legal Policy at the Department of Justice initiated the vetting process on March 11, 2021. On April 29, 2021, my nomination was submitted to the Senate.

12. Have you had any conversations with individuals associated with the group Demand Justice—including, but not limited to, Brian Fallon or Chris Kang—in connection

with this or any other potential judicial nomination? If so, please explain the nature of the conversations.

Response: No.

13. Have you had any conversations with individuals associated with the American Constitution Society—including, but not limited, to Russ Feingold—in connection with this or any other potential judicial nomination? If so, please explain the nature of the conversations.

Response: No.

14. Please explain with particularity the process by which you answered these questions.

Response: On June 16, 2021, the Office of Legal Policy at the Department of Justice forwarded these questions to me. I reviewed each question independently, conducted research as necessary, and drafted answers. I then shared my responses with the Office of Legal Policy and was provided feedback that I considered before submitting my final responses to the Committee.

15. Do these answers reflect your true and personal views?

Response: Yes.

Nomination of David G. Estudillo
to be United States District Judge for the Western District of Washington Questions for the Record
Submitted June 16, 2021

QUESTIONS FROM SENATOR COTTON

1. **Since becoming a legal adult, have you ever been arrested for or accused of committing a hate crime against any person?**

   Response: No.

2. **Since becoming a legal adult, have you ever been arrested for or accused of committing a violent crime against any person?**

   Response: No.

3. **Was *D.C. v. Heller*, 554 U.S. 570 (2008) rightly decided?**

   Response: *Heller* is binding Supreme Court precedent. In general, as a sitting state court judge, and as a judicial nominee, because I am bound by Supreme Court precedent, any views I may have about whether any precedent is correctly decided are irrelevant to my ability and obligation to apply it.

4. **Is the Second Amendment right to keep and bear arms an individual right belonging to individual persons, or a collective right that only belongs to a group such as a militia?**

   Response: In *District of Columbia v. Heller*, the Supreme Court held that the Second Amendment confers "an individual right to keep and bear arms." 554 U.S.570, 595 (2008). In *McDonald v. City of Chicago*, the Court further held the right the Second Amendment guarantees is a fundamental right that applies to the states as well as the federal government. 561 U.S. 742 (2010).

5. **Please describe what you believe to be the Supreme Court's holding in *Greer v. United States*, 593 U.S. _____ (2021).**

   Response: The Supreme Court identified the issue and holding as follows: "The question for this Court is whether Greer and Gary are entitled to plain-error relief for their unpreserved *Rehaif* claims. We conclude they are not." *Greer v. United States*, No. 19-8709, No. 20-444, 2021 WL 2405146, *3 (S. Ct. Jun. 14, 2021). "In *Rehaif v. United States*, 588 U.S. ——, 139 S. Ct. 2191, 204 L.Ed.2d 594 (2019), this Court clarified the *mens rea* requirement for firearms-possession offenses, including the felon-in-possession

offense. In felon-in-possession cases after *Rehaif*, the Government must prove not only that the defendant knew he possessed a firearm, but also that *he knew he was a felon* when he possessed the firearm." *Id*. at *2.

6. **Please describe what you believe to be the Supreme Court's holding in *Terry v. United States*, 593 U.S. _____ (2021).**

   Response: The Supreme Court stated, "we hold that § 2(a) of the Fair Sentencing Act modified the statutory penalties only for subparagraph (A) and (B) crack offenses—that is, the offenses that triggered mandatory-minimum penalties." *Terry v. United States*, No. 20-5904, 2021 WL 2405145, *5 (S. Ct. Jun. 14, 2021).

7. **Please describe what you believe to be the Supreme Court's holding in *Jones v. Mississippi*, 593 U.S. _____ (2021).**

   Response: This case involved a defendant who committed a homicide when he was under the age of 18 and was subsequently sentenced to life without parole. The defendant argued that "a sentencer who imposes a life-without-parole must *also* make a separate factual finding that the defendant is permanently incorrigible, or at least provide an on-the-record sentencing explanation with an implicit finding that the defendant is permanently incorrigible." *Jones v. Mississippi*, 141 S. Ct. 1307, 1311 (2021). "In light of [the] explicit language in the Court's prior decisions, we must reject Jones's argument." *Id.*

8. **Please describe what you believe to be the Supreme Court's holding in *Tandon v. Newsom*, 593 U.S. _____ (2021).**

   Response: In analyzing California's COVID restrictions as they pertained to religious activities, the Supreme Court identified four key principles: (1) "government regulations are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat *any* comparable secular activity more favorably than religious exercise"; (2) "whether two activities are comparable for purposes of the Free Exercise Clause must be judged against the asserted government interest that justifies the regulation at issue"; (3) "the government has the burden to establish that the challenged law satisfies strict scrutiny"; and (4) "litigants otherwise entitled to emergency injunctive relief remain entitled to such relief where the applicants 'remain under a constant threat' that government officials will use their power to reinstate the challenged restrictions." *Tandon v. Newsom*, 141 S. Ct. 1294, 1296-1297 (2021) (citation omitted). Applying these principles, the Supreme Court held the plaintiffs were likely to succeed on their free exercise claim regarding California's COVID restrictions on private gatherings and were entitled to an injunction pending appeal. *Id.* at 1297.

9. **Please describe what you believe to be the Supreme Court's holding in *Sanchez v. Mayorkas*, 593 U.S. _____ (2021).**

   Response: The Supreme Court stated its holding as follows: "We granted certiorari…to resolve…whether a [Temporary Protected Status] recipient who entered the country unlawfully can still become [a Legal Permanent Resident]. … The [Temporary Protected Status] program gives foreign nationals nonimmigrant status, but it does not admit them. So the conferral of [Temporary Protected Status] does not make an unlawful entrant (like Sanchez) eligible under § 1255 [of the Immigration and Nationality Act] for adjustment to [Legal Permanent Resident] status." *Sanchez v. Mayorkas*, No. 20-315, 2021 WL 2301964, *3 (S. Ct. Jun. 7, 2021) (citation omitted).

10. **What is your view of arbitration as a litigation alternative in civil cases?**

    Response: I believe arbitration can be useful, in certain situations, in facilitating the resolution of disputes.

11. **Please describe with particularity the process by which you answered these questions and the written questions of the other members of the Committee.**

    Response: On June 16, 2021, the Office of Legal Policy at the Department of Justice forwarded these questions to me. I reviewed each question independently, conducted research as necessary, and drafted answers. I then shared my responses with the Office of Legal Policy and was provided feedback that I considered before submitting my final responses to the Committee.

12. **Did any individual outside of the United States federal government write or draft your answers to these questions or the written questions of the other members of the Committee? If so, please list each such individual who wrote or drafted your answers. If government officials assisted with writing or drafting your answers, please also identify the department or agency with which those officials are employed.**

    Response: No individual wrote or drafted my answers. As stated in response to Question No. 11, I shared my responses with the Office of Legal Policy and was provided feedback that I considered before submitting my final responses to the Committee.

SENATOR TED CRUZ U.S. Senate Committee on the Judiciary

Questions for the Record for David Estudillo, Nominee for the United States District Court for the Western District of Washington

I. Directions

Please provide a wholly contained answer to each question. A question's answer should not cross-reference answers provided in other questions. Because a previous nominee declined to provide any response to discrete subparts of previous questions, they are listed here separately, even when one continues or expands upon the topic in the immediately previous question or relies on facts or context previously provided.

If a question asks for a yes or no answer, please provide a yes or no answer first and then provide subsequent explanation. If the answer to a yes or no question is sometimes yes and sometimes no, please state such first and then describe the circumstances giving rise to each answer.

If a question asks for a choice between two options, please begin by stating which option applies, or both, or neither, followed by any subsequent explanation.

If you disagree with the premise of a question, please answer the question as-written and then articulate both the premise about which you disagree and the basis for that disagreement.

If you lack a basis for knowing the answer to a question, please first describe what efforts you have taken to ascertain an answer to the question and then provide your tentative answer as a consequence of its reasonable investigation. If even a tentative answer is impossible at this time, please state why such an answer is impossible and what efforts you, if confirmed, or the administration or the Department, intend to take to provide an answer in the future. Please further give an estimate as to when the Committee will receive that answer.

To the extent that an answer depends on an ambiguity in the question asked, please state the ambiguity you perceive in the question, and provide multiple answers which

articulate each possible reasonable interpretation of the question in light of the ambiguity.

II. Questions

1. **Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's philosophy from Warren, Burger, Rehnquist, or Robert's Courts is most analogous with yours.**

   Response: As a sitting state court judge, my judicial philosophy is very basic. I seek to maintain a strong work ethic, understand the facts before me, understand the legal arguments, research and understand any applicable law, and then apply the law to the facts; and in every aspect of my work, be open-minded and inclusive of diverse experiences and perspectives. I have not developed any other formal judicial philosophy. Because my function as a state court judge is vastly different than that of any Supreme Court Justice, I am not able to draw comparisons with the philosophies of Supreme Court Justices.

2. **Do you believe the meaning of the Constitution changes over time absent changes through the Article V amendment process?**

   Response: As a state court judge, I have not formed an opinion as to whether the meaning of the Constitution changes over time. This is because in applying any constitutional provision that has come before me, I have been bound by Supreme Court precedent and the methodology it uses to interpret the Constitution. I am not in a position to criticize any Supreme Court methodology or to offer personal opinions about how the Supreme Court should interpret the Constitution over time. I am obligated to follow the applicable method of constitutional interpretation the Supreme Court mandates.

3. **President Biden has created a commission to advise him on reforming the Supreme Court. Do you believe that Congress should increase, or decrease, the number of justices on the U.S. Supreme Court? Please explain.**

   Response: As a sitting state court judge, and as a judicial nominee, it would be inappropriate for me to opine on the size or composition of our Supreme Court. My obligation is to follow Supreme Court precedent regardless of its size or composition.

4. **Do you personally own any firearms? If so, please list them.**

   Response: Yes. My wife and I own a Remington Nylon .22 LR and a Winchester Model 100 .308, which previously belonged to my wife's father.

5. **Have you ever personally owned any firearms?**

Response: Yes. Please see my response to Question No. 4.

6. **Have you ever used a firearm? If so, when and under what circumstances?**

Response: Yes. I have gone to a shooting range with friends.

7. **Is the ability to own a firearm a personal civil right?**

Response: In *District of Columbia v. Heller*, the Supreme Court held that the Second Amendment confers "an individual right to keep and bear arms." 554 U.S.570, 595 (2008). In *McDonald v. City of Chicago*, the Court further held that the right that the Second Amendment guarantees is a fundamental right that applies to the states as well the federal government. 561 U.S. 742 (2010).

8. **Is the criminal justice system systemically racist?**

Response: In my mind, systemic racism refers to disparate treatment of certain groups as compared to other groups that are similarly situated. I believe the United States Sentencing Commission has published reports identifying disparities in sentencing between black male offenders and similarly situated white male offenders. *See*, *e.g.*, U.S. Sentencing Commission, *Demographic Differences in Sentencing: An Update to the 2012 Booker Report* (Nov. 17, 2017). If confirmed as a federal district judge, I would ensure that every defendant I sentence is sentenced fairly and based only on the factors in 18 U.S.C. § 3553.

9. **In 2016, you described your philosophy as: "Faith, Family, Hard Work, Education and Community are values that guide me in my personal and professional life. I faithfully follow the Constitution, apply the law in a fair and impartial manner, and protect the individual rights of all persons…Maintaining the integrity of the judicial system is top priority." You also had this to say, regarding attempts to cast your election in purely racial and identity politics terms: "The fact that I am Latino, the fact that my parents were from Mexico, the fact that I might look a little different than some people, that is not the defining characteristic of whether I am qualified to be a judge…[and] was not the defining qualification that was used to determine whether or not I am eligible to be a Superior Court judge."**

   a. **Do you agree that an individual's racial identity has nothing to do with whether he or she will be a good judge?**

      Response: Yes.

b. **Would you consider it appropriate to treat one nominee as different, or more important, in virtue of his or her race or ethnicity? Please explain.**

Response: I agree it is not appropriate for me to treat any nominee as different, or more important, because of his or her race or ethnicity.

Senator Josh Hawley
Questions for the Record

David G. Estudillo
Nominee, U.S. District Court for the Western District of Washington

1. **Under Supreme Court and U.S. Court of Appeals for the Ninth Circuit precedent, what is the legal standard that applies to a claim that an execution protocol violates the Eighth Amendment's prohibition on cruel and unusual punishment?**

   Response: To succeed on an execution protocol claim under the Eighth Amendment, a prisoner must establish "a substantial risk of serious harm", which is an "objectively intolerable risk of harm that prevents prison officials from pleading that they were subjectively blameless for purposes of the Eighth Amendment." *Glossip v. Gross*, 576 U.S. 863, 877 (2015) (quoting *Baze v. Rees*, 553 U.S. 35 (2008), internal quotation marks omitted). In addition, a prisoner must identify an alternative method of execution that is "feasible, readily implemented, and in fact significantly reduce[s] a substantial risk of pain." *Id.* (quoting *Baze*, 553 U.S. at 52). The Ninth Circuit standard is in accordance with the Supreme Court. *See*, *e.g.*, *Lopez v. Brewer*, 680 F.3d 1068 (9th Cir. 2012) and *Towery v. Brewer*, 672 F.3d 950 (9th Cir. 2012).

2. **Under the Supreme Court's holding in *Glossip v. Gross*, is a petitioner required to establish the availability of a "known and available alternative method" that has a lower risk of pain in order to succeed on a claim against an execution protocol under the Eighth Amendment?**

   Response: In *Glossip v. Gross*, the Supreme Court stated a requirement of all Eighth Amendment execution protocol challenges is the establishment of a "known and available alternative method of execution that entails a lesser risk of pain[.]" 576 U.S. 863, 867 (2015). Explaining further, it stated that a prisoner must identify an alternative method of execution that is "feasible, readily implemented, and in fact significantly reduce[s] a substantial risk of severe pain." *Glossip v. Gross*, 576 U.S. 863, 877 (2015) (quoting *Baze v. Rees*, 553 U.S. 35, 52 (2008)).

3. **Has the Supreme Court or the U.S. Court of Appeals for the Ninth Circuit ever recognized a constitutional right to DNA analysis for habeas corpus petitioners in order to prove their innocence of their convicted crime?**

   Response: The Supreme Court has held there is no constitutional right to DNA analysis for habeas corpus petitioners. *See*, *e.g.*, *District Attorney's Office for Third Judicial Dist. v. Osborne*, 129 S. Ct. 2308, 2322 (2019) ("[The defendant] asks that we recognize a freestanding right to DNA evidence untethered from the liberty interests he hopes to vindicate with it. We reject the invitation and conclude, in the

circumstances of this case, that there is no such substantive due process right."). Ninth Circuit precedent is in accordance with the Supreme Court. *See*, *e.g.*, *Morrison v. Peterson*, 809 F.3d 1059, 1065 (9th Cir. 2015) ("*Osborne* rejected the extension of substantive due process to [DNA testing.]").

4. **Do you have any doubt about your ability to consider cases in which the government seeks the death penalty, or habeas corpus petitions for relief from a sentence of death, fairly and objectively?**

   Response: No.

5.

   a. **Under Supreme Court and U.S. Court of Appeals for the Ninth Circuit precedent, what is the legal standard used to evaluate a claim that a facially neutral state governmental action is a substantial burden on the free exercise of religion? Please cite any cases you believe would be binding precedent.**

      Response: Applying the Religious Land Use and Institutionalized Persons Act, the Supreme Court found a substantial burden on the free exercise of religion where a person was faced with a choice between "engag[ing] in conduct that seriously violates [his] religious beliefs[]" and suffering "serious disciplinary action." *Holt v. Hobbs*, 574 U.S. 352, 361 (2015). Most recently, the Supreme Court identified that the burden of "the choice of curtailing [religious exercise] or approving relationships inconsistent with a [party's religious] beliefs" was "constitutionally [in]permissible." *Fulton v. City of Philadelphia*, No. 19-123, 2021 WL 2459253, *5 (S. Ct. Jun. 17, 2021). *See also Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021) ("[G]overnment regulations are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat *any* comparable secular activity more favorably than religious exercise.").

   b. **Under Supreme Court and U.S. Court of Appeals for the Ninth Circuit precedent, what is the legal standard used to evaluate a claim that a state governmental action discriminates against a religious group or religious belief? Please cite any cases you believe would be binding precedent.**

      Response: Under the First Amendment, the government may "not base laws or regulations on hostility to a religion or religious viewpoint." *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Com'n*, 138 S. Ct. 1719, 1731 (2018). Most recently, the Supreme court stated, "[g]overnment fails to act neutrally when it proceeds in a manner intolerant of religious beliefs or

restricts practices because of their religious nature." *Fulton v. City of Philadelphia*, No. 19-123, 2021 WL 2459253, *5 (S. Ct. Jun. 17, 2021). "[E]ven 'subtle bars from neutrality'" are prohibited. *Masterpiece Cakeshop*, 138 S. Ct. at 1731 (quoting *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 534 (1993)). This means the government is "obliged under the Free Exercise Clause to proceed in a manner neutral toward and tolerant of [a person's] religious beliefs." *Masterpiece Cakeshop*, 138 S. Ct. at 1731. "Factors relevant to the assessment of governmental neutrality include 'the historical background of the decision under challenge, the specific series of events leading to the enactment or official policy in question, and the legislative or administrative history, including contemporaneous statements made by members of the decisionmaking body.'" *Id*. (quoting *Church of the Lukumi Babalu*, 508 U.S. at 540 (1993)).

c. What is the standard in the U.S. Court of Appeals for the Ninth Circuit for evaluating whether a person's religious belief is held sincerely?

Response: "[R]eligious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." *Fulton v. City of Philadelphia*, No. 19-123, 2021 WL 2459253, *4 (S. Ct. Jun. 17, 2021). However, the Supreme Court has treated the sincerity of a person's religious beliefs as a question of fact for the trier of fact to determine. *United States v. Ballard*, 322 U.S. 78 (1944). In *Ballard*, the defendants sought to dismiss criminal charges based on the Free Exercise Clause. The trial judge ruled, "'[t]he jury will be called upon to pass on the question of whether or not the defendants honestly and in good faith believed the [religious] representations which are set forth in the indictment.'" 322 U.S. at 84. The trial judge, however, "withheld from the jury all questions concerning the truth or falsity of the religious beliefs or doctrines of respondents." *Id*. at 88. The Supreme Court concluded the trial judge's rulings were proper. *Id*. *See also Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 718 (2014) ("[T]he scope of [the Religious Land Use and Institutionalized Persons Act] shows that Congress was confident of the ability of the federal courts to weed out insincere [religious] claims.").

6. What is your understanding of the Supreme Court's holding in *District of Columbia v. Heller?*

Response: In *District of Columbia v. Heller*, the Supreme Court held that the Second Amendment confers "an individual right to keep and bear arms." 554 U.S.570, 595 (2008).

7. Please state whether you agree or disagree with the following statement and explain why: "Absent binding precedent, judges should interpret statutes based on the meaning of the statutory text, which is that which an ordinary speaker of English

would have understood the words to mean, in their context, at the time they were enacted."

Response: As a state court judge, I have had to interpret statutory text. In such instances, I first look to the text of the statute itself to attempt to determine its plain meaning. I also look to the structure of the statute to assist in determining the meaning and compare any similar or related language used throughout the statute to ensure meaning is given to each word of the statute without rendering other provisions meaningless or superfluous. This approach is in line with Ninth Circuit precedent. *See*, *e.g.*, *Boise Cascade Corp. v. U.S. E.P.A.*, 942 F.2d 1427, 1432 (9th Cir. 1991) (Courts must "interpret statutes as a whole, giving effect to each word and making every effort not to interpret a provision in a manner that renders other provisions of the same statute inconsistent, meaningless or superfluous."). If confirmed, this is the approach I would apply when engaging in statutory interpretation.

Questions for the Record for David G. Estudillo
From Senator Mazie K. Hirono

1. **As part of my responsibility as a member of the Senate Judiciary Committee and to ensure the fitness of nominees, I am asking nominees to answer the following two 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.

Senator Mike Lee
Questions for the Record
David Estudillo, W.D. Washington

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

Response: As a sitting state court judge, my judicial philosophy is very basic. I seek to maintain a strong work ethic, understand the facts before me, understand the legal arguments, research and understand any applicable law, and then apply the law to the facts; and in every aspect of my work, be open-minded and inclusive of diverse experiences and perspectives. I have not developed any other formal judicial philosophy.

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

Response: As a state court judge, I have had to interpret statutory text. In such instances, I first look to the text of the statute itself to attempt to determine its plain meaning. I also look to the structure of the statute as a whole to assist in determining the meaning, and compare any similar or related language used throughout the statute to ensure meaning is given to each word of the statute without rendering other provisions meaningless or superfluous. This approach is in line with Ninth Circuit precedent. *See*, *e.g.*, *Boise Cascade Corp. v. U.S. E.P.A.*, 942 F.2d 1427, 1432 (9th Cir. 1991) (Courts must "interpret statutes as a whole, giving effect to each word and making every effort not to interpret a provision in a manner that renders other provisions of the same statute inconsistent, meaningless or superfluous."). I have also looked to language used in related statutes to possibly obtain a better understanding of the particular text at issue. I may also look to precedent that might have applied the ambiguous text in a context related to the context before me, or that may assist in identifying additional tools of interpretation to apply. Also, as permitted by precedent, I have looked at the legislative history for possible indicia of the meaning of ambiguous text but have not relied exclusively on legislative history to determine the meaning of ambiguous text. If confirmed, I would use this same approach.

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

Response: If confirmed as a federal district judge, I would not expect to regularly confront many constitutional questions on which there was not already Supreme Court or Ninth Circuit precedent. So in general, I would research and review Supreme Court and Ninth Circuit precedent involving the relevant provision and then apply that precedent to the specific facts of the matter before me.

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

Response. Certain Supreme Court precedent, such as *Heller*, relied on the original public meaning of a particular provision of the Constitution. In general, I would follow Supreme Court and Ninth Circuit precedent whether it is based on original

public meaning or not. When interpreting the Constitution, I would research and faithfully apply all Supreme Court and Ninth Circuit precedent to the specific facts presented.

5. **What are the constitutional requirements for standing?**

Response: To establish constitutional standing, a plaintiff must prove: (1) an injury-in-fact, (2) causation, and (3) redressability. Regarding an injury-in-fact, a plaintiff must establish "an invasion of a legally protected interest which is (a) concrete and particularized...and (b) actual or imminent, not conjectural or hypothetical." *Lujan v. Defenders of Wildlife*, 112 S.Ct. 2130, 2136 (1992) (internal quotation marks omitted).

6. **Do you believe there is a difference between "prudential" jurisdiction and Article III jurisdiction in the federal courts? If so, which jurisdictional requirements are prudential, and which are mandatory?**

Response: Prudential standing is a doctrine not derived from Article III and has "not [been] exhaustively defined." *Lexmark Int'l, Inc. v. Static Control Components, Inc.,* 572 U.S. 118, 126 (2014). There are at least three broad principles within prudential standing: "the general prohibition on a litigant's raising another person's legal rights, the rule barring adjudication of generalized grievances more appropriately addressed in the representative branches, and the requirement that a plaintiff's complaint fall within the zone of interests protected by the law invoked." *Id*. (internal quotation marks omitted). If confirmed, I would apply precedent regarding Article III standing and any applicable "prudential" principle(s).

7. **How would you define the doctrine of administrative exhaustion?**

Response: The doctrine of administrative exhaustion provides "that no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted." *McKart v. United States*, 395 U.S. 185, 193 (1969) (internal quotation marks omitted).

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

Response: Congress has implied powers based on the Necessary and Proper Clause of the Constitution. *M'Culloch v. Maryland,* 17 U.S. 316, 411-412 (1819) ("To [Congress's] enumeration of powers is added, that of making 'all laws which shall be necessary and proper, for carrying into execution the foregoing powers, and all other powers vested by this constitution, in the government of the United States, or in any department thereof.'").

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

Response: If confronted with this type of issue, I would carefully review the specific facts presented in the matter and carefully review the legal arguments offered by each litigant. I also would carefully research and review Supreme Court and Ninth Circuit

precedent that may apply. After obtaining an understanding of the facts, the legal issues presented, and any applicable precedent, I would faithfully apply that precedent to the specific facts of the lawsuit.

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

Response: The Supreme Court has concluded there are some rights that are not expressly enumerated in the Constitution. *See*, *e.g.*, *Griswald v. Connecticut*, 381 U.S. 479 (1965). If confirmed, I would follow and apply Supreme Court and Ninth Circuit precedent.

11. **What rights are protected under substantive due process?**

Response: The Supreme Court has held that substantive due process protects fundamental rights. "We have regularly observed that the Due Process Clause specially protects those fundamental rights and liberties which are, objectively, 'deeply rooted in this Nation's history and tradition'… and 'implicit in the concept of ordered liberty,' such that 'neither liberty nor justice would exist if they were sacrificed'[.]" *Washington v. Glucksberg*, 521 U.S. 702, 720-721 (1997) (citations omitted). If confirmed, I would follow and apply Supreme Court and Ninth Circuit precedent on substantive due process issues.

12. **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: As a sitting state court judge, and as a judicial nominee, I am required to follow Supreme Court and Ninth Circuit precedent on the scope of substantive due process protections. Any personal views I may have are not relevant to the application of precedent.

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

Response: There are three broad categories of activity that Congress may regulate under the powers of the Commerce Clause: "Congress may regulate the use of the channels of interstate commerce. … Congress is empowered to regulate and protect instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities. … Congress' commerce authority includes the power to regulate those activities having a substantial relation to interstate commerce[.]" *United States v. Morrison*, 529 U.S. 598, 609 (2000) (internal quotation marks and citations omitted); *see also United States v. Lopez*, 514 U.S. 549 (1995).

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

Response: Race, national origin, religion and alienage have been identified as

groups falling within a suspect class, and laws affecting these groups must survive strict scrutiny review. *See*, *e.g.*, *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432 (1985).

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

Response: The role of checks and balances and separation of powers are key components of our Constitution's structure. Each branch of government is given limited powers to act so as not to concentrate power in one branch of government. As a result, each branch has some authority to act as a check on the actions sought or taken by the other branches of government. This structural design is vital to protecting the constitutional rights and liberties guaranteed to the people of our nation.

16. **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: If confronted with this type of issue, I would carefully review the specific facts presented in the matter and carefully review the legal arguments offered by each litigant. I also would carefully research and review Supreme Court and Ninth Circuit precedent that may apply. After obtaining an understanding of the facts, the legal issues presented, and any applicable precedent, I would faithfully apply that precedent to the specific facts of the lawsuit.

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

Response: Empathy should play no role in making decisions. A judge must be objective and impartial in reviewing cases and in applying applicable precedent. A judge, however, should be mindful that litigants and the public are more willing to accept decisions where a judge is able to express a full understanding of the factual and legal arguments presented to the court.

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

Response: Neither outcome is acceptable. If confirmed, I would be required to faithfully apply the law to avoid such outcomes.

19. **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 not undertaken any research or analysis to identify the number of times the Supreme Court has invalidated federal statutes or the reasons therefor. If confirmed, I will faithfully follow Supreme Court and Ninth Circuit precedent in

determining the constitutionality of a federal statute.

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

Response: Judicial review refers to the authority of the judiciary to review and determine whether actions of the other branches of government are constitutional. Judicial supremacy refers to the idea that the Supreme Court is the ultimate arbiter in interpreting the Constitution and that its decisions are binding on the other branches absent a constitutional amendment or subsequent Supreme Court decision superseding a prior decision.

21. **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 independentobligation to follow the Constitution with the need to respect duly rendered judicial decisions?**

Response: Every elected official is required to follow the Constitution. There are no exceptions.

22. **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: Respect and confidence in the judiciary and the decisions made therein are maintained only if judges remain impartial without interjecting personal views in the decision-making process. Confidence in the judgment of the judiciary is vital to an orderly society.

23. **How would you describe your approach to reading statutes—how much weight do you give to the plain meaning of the text? When we talk about the plain meaning of a statute, are we talking about the public understanding at the time of enactment, or does the meaning change as social norms and linguistic conventions evolve?**

Response: As a state court judge, I have had to interpret statutory text. In such instances, I first look to the text of the statute itself to attempt to determine its plain meaning. I also look to the structure of the statute to assist in determining the meaning and compare any similar or related language used throughout the statute to ensure meaning is given to each word of the statute without rendering other provisions meaningless or superfluous. This approach is in line with Ninth Circuit precedent. *See*, *e.g.*, *Boise Cascade Corp. v. U.S. E.P.A.*, 942 F.2d 1427, 1432 (9th Cir. 1991) (Courts must "interpret statutes as a whole, giving effect to each word and making every effort not to interpret a provision in a manner that renders other provisions of the same statute inconsistent, meaningless or superfluous."). In

addition, in reviewing the text, a court is required to "exhaust all traditional tools of construction" prior to waving the "ambiguity flag". *Medina Tovar v. Zuchowski*, 982 F.3d 631, 634 (9th Cir. 2020) (quoting *Kisor v. Wilkie*, 139 S. Ct. 2400, 2415 (2019)). This means, a court is to determine "[t]he plainness or ambiguity of [the] statutory language…by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole." *United States v. Boyd*, 991 F.3d 1077, 1080 (9th Cir. 2021) (quoting *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997). "Ambiguity is a creature not of definitional possibilities but of statutory context." *United States v. Nishiie*, 996 F.3d 1013, 1021 (9th Cir. 2021) (quoting *Brown v. Gardner*, 513 U.S. 115, 118 (1994)). If confirmed, I would follow all Supreme Court and Ninth Circuit precedent regarding statutory interpretation.

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

Response: A lower court judge is required to follow and apply the applicable Supreme Court and circuit court precedent regardless of any views as to the constitutional validity of such precedent. If prior Supreme Court and circuit court precedent does not appear to speak directly to the issue at hand, I would carefully review the specific facts presented in the matter and carefully review the legal arguments offered by each litigant. I also would carefully research and review all Supreme Court and Ninth Circuit precedent that might provide possible guidance as to the issue presented.

25. **Do you believe it is ever appropriate to look past jurisdictional issues if they prevent the court from correcting a serious injustice?**

Response: No.

26. **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. Factors to be considered in imposing a sentence are identified in 18 U.S.C. § 3553. One factor to consider is "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." *Id*. at (a)(6). A person's race, gender, nationality, sexual orientation or gender identity are not identified in 18 U.S.C. § 3553. If confirmed, I would consider and apply all the factors identified in 18 U.S.C. § 3553.

Joint Circuit and District Prep Session Senator Ben Sasse
Questions for the Record
U.S. Senate Committee on the Judiciary
Hearing: "Nominations"
June 9, 2021

For Judge David Estudillo:

1. **Please list some examples from your time as a judge of when your rulings conflicted with your personal policy preferences or personal sense of justice.**

   Response: As a state court judge for the past six years, I have set aside any personal view I may have to ensure that I reached the correct legal results based on the law and the facts. I can say that I have had to make difficult decisions in areas such as sentencing and termination of parental rights where I have felt a sense of burden, but even in those cases, the fact that I must make difficult decisions does not prevent me from reaching the correct legal result.

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: As a sitting state court judge, my judicial philosophy is very basic. I seek to maintain a strong work ethic, understand the facts before me, understand the legal arguments, research and understand any applicable law or precedent, and then apply the law to the facts; and in every aspect of my work, be open-minded and inclusive of diverse experiences and perspectives. I have not developed any other formal judicial philosophy as my role as a state court judge has been to follow legal precedent.

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

   Response: As a sitting state court judge, my role has been to identify and follow applicable state and federal Supreme Court precedent. The constitutional areas that have come before me have involved developed areas of constitutional interpretation. I,

therefore, do not have a basis to say whether I consider myself an originalist or anything else when it comes to constitutional analysis.

5. Would you describe yourself as a textualist?

Response: As a sitting state court judge, my role has been to identify and follow applicable state and federal Supreme Court precedent. As a sitting state court judge, I am bound to interpret statutes and, in those cases, I have started with the text of the statute. I would do the same if confirmed as a federal district judge.

6. Do you believe the Constitution is a "living" document? Why or why not?

Response: I believe the Constitution is an enduring document that is meant to apply to our government and society over time. Because I am a state court judge, and a judicial nominee, I must, and will, follow all Supreme Court precedent interpreting and applying the Constitution.

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

Response: I have not studied in any meaningful way the jurisprudence of individual judges appointed after January 20, 1953, other than reading decisions that may be applicable to issues presented before me. In general, I can say I admire both Justice Antonin Scalia and Justice Ruth Bader Ginsburg because I saw both figures as being larger than life. In addition, despite their differences of opinions on certain issues, they always portrayed a sense of collegiality that I believe we all should aspire to.

8. Was Marbury v. Madison correctly decided?

Response: As a sitting state court judge, and as a judicial nominee, it is generally inappropriate for me to offer comments about the legitimacy of any Supreme Court decision or precedent because I am bound to apply Supreme Court precedent regardless of any views I may hold. However, because I am aware prior judicial nominees have offered an opinion on this decision and its holding is unlikely to ever be challenged, I feel comfortable in stating that I believe *Marbury v. Madison* was correctly decided.

9. Was Lochner v. New York correctly decided?

Response: As I noted above, as a sitting state court judge, and as a judicial nominee, it is generally inappropriate for me to offer comments about the legitimacy of any Supreme Court decision or precedent because I am obligated to apply binding Supreme Court precedent regardless of any views I may hold.

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

Response: As a sitting state court judge, and as a judicial nominee, it is generally inappropriate for me to offer comments about the legitimacy of any Supreme Court decision or precedent because I am bound to apply Supreme Court precedent regardless of any views I may hold. However, because I am aware prior judicial nominees have offered an opinion on this decision and its holding is unlikely to ever be challenged, I feel comfortable in stating that I believe *Brown v. Board of Education* was correctly decided.

11. Was Bolling v. Sharpe correctly decided?

Response: As previously noted, as a sitting state court judge, and as a judicial nominee, it is generally inappropriate for me to offer comments about the legitimacy of any Supreme Court decision or precedent because I am obligated to apply binding Supreme Court precedent regardless of any views I may hold.

12. Was Cooper v. Aaron correctly decided?

Response: As previously noted, as a sitting state court judge, and as a judicial nominee, it is generally inappropriate for me to offer comments about the legitimacy of any Supreme Court decision or precedent because I am obligated to apply binding Supreme Court precedent regardless of any views I may hold.

13. Was Mapp v. Ohio correctly decided?

Response: As previously noted, as a sitting state court judge, and as a judicial nominee, it is generally inappropriate for me to offer comments about the legitimacy of any Supreme Court decision or precedent because I am obligated to apply binding Supreme Court precedent regardless of any views I may hold.

14. Was Gideon v. Wainwright correctly decided?

Response: As previously noted, as a sitting state court judge, and as a judicial nominee, it is generally inappropriate for me to offer comments about the legitimacy of any Supreme Court decision or precedent because I am obligated to apply binding Supreme Court precedent regardless of any views I may hold.

15. Was Griswold v. Connecticut correctly decided?

Response: As previously noted, as a sitting state court judge, and as a judicial nominee, it is generally inappropriate for me to offer comments about the legitimacy of any Supreme Court decision or precedent because I am obligated to apply binding Supreme Court precedent regardless of any views I may hold.

16. Was South Carolina v. Katzenbach correctly decided?

Response: As previously noted, as a sitting state court judge, and as a judicial nominee, it is generally inappropriate for me to offer comments about the legitimacy of any

Supreme Court decision or precedent because I am obligated to apply binding Supreme Court precedent regardless of any views I may hold.

17. Was Miranda v. Arizona correctly decided?

Response: As previously noted, as a sitting state court judge, and as a judicial nominee, it is generally inappropriate for me to offer comments about the legitimacy of any Supreme Court decision or precedent because I am obligated to apply binding Supreme Court precedent regardless of any views I may hold.

18. Was Loving v. Virginia correctly decided?

Response: As a sitting state court judge, and as a judicial nominee, it is generally inappropriate for me to offer comments about the legitimacy of any Supreme Court decision or precedent because I am bound to apply Supreme Court precedent regardless of any views I may hold. However, because I am aware prior judicial nominees have offered an opinion on this decision and its holding is unlikely to ever be challenged, I feel comfortable in stating that I believe *Loving v. Virginia* was correctly decided.

19. Was Katz v. United States correctly decided?

Response: As previously noted, as a sitting state court judge, and as a judicial nominee, it is generally inappropriate for me to offer comments about the legitimacy of any Supreme Court decision or precedent because I am obligated to apply binding Supreme Court precedent regardless of any views I may hold.

20. Was Roe v. Wade correctly decided?

Response: As previously noted, as a sitting state court judge, and as a judicial nominee, it is generally inappropriate for me to offer comments about the legitimacy of any Supreme Court decision or precedent because I am obligated to apply binding Supreme Court precedent regardless of any views I may hold.

21. Was Romer v. Evans correctly decided?

Response: As previously noted, as a sitting state court judge, and as a judicial nominee, it is generally inappropriate for me to offer comments about the legitimacy of any Supreme Court decision or precedent because I am obligated to apply binding Supreme Court precedent regardless of any views I may hold.

22. Was United States v. Virginia correctly decided?

Response: As previously noted, as a sitting state court judge, and as a judicial nominee, it is generally inappropriate for me to offer comments about the legitimacy of any Supreme Court decision or precedent because I am obligated to apply binding Supreme Court precedent regardless of any views I may hold.

23. Was Bush v. Gore correctly decided?

Response: As previously noted, as a sitting state court judge, and as a judicial nominee, it is generally inappropriate for me to offer comments about the legitimacy of any Supreme Court decision or precedent because I am obligated to apply binding Supreme Court precedent regardless of any views I may hold.

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

Response: As previously noted, as a sitting state court judge, and as a judicial nominee, it is generally inappropriate for me to offer comments about the legitimacy of any Supreme Court decision or precedent because I am obligated to apply binding Supreme Court precedent regardless of any views I may hold.

25. Was Crawford v. Marion County Election Bord correctly decided?

Response: As previously noted, as a sitting state court judge, and as a judicial nominee, it is generally inappropriate for me to offer comments about the legitimacy of any Supreme Court decision or precedent because I am obligated to apply binding Supreme Court precedent regardless of any views I may hold.

26. Was Boumediene v. Bush correctly decided?

Response: As previously noted, as a sitting state court judge, and as a judicial nominee, it is generally inappropriate for me to offer comments about the legitimacy of any Supreme Court decision or precedent because I am obligated to apply binding Supreme Court precedent regardless of any views I may hold.

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

Response: As previously noted, as a sitting state court judge, and as a judicial nominee, it is generally inappropriate for me to offer comments about the legitimacy of any Supreme Court decision or precedent because I am obligated to apply binding Supreme Court precedent regardless of any views I may hold.

28. Was Shelby County v. Holder correctly decided?

Response: As previously noted, as a sitting state court judge, and as a judicial nominee, it is generally inappropriate for me to offer comments about the legitimacy of any Supreme Court decision or precedent because I am obligated to apply binding Supreme Court precedent regardless of any views I may hold.

29. Was United States v. Windsor correctly decided?

Response: As previously noted, as a sitting state court judge, and as a judicial nominee, it is generally inappropriate for me to offer comments about the legitimacy of any Supreme Court decision or precedent because I am obligated to apply binding Supreme Court precedent regardless of any views I may hold.

30. Was Obergefell v. Hodges correctly decided?

Response: As previously noted, as a sitting state court judge, and as a judicial nominee, it is generally inappropriate for me to offer comments about the legitimacy of any Supreme Court decision or precedent because I am obligated to apply binding Supreme Court precedent regardless of any views I may hold.

31. 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: I have been nominated for the position of a district judge not a circuit judge. If confirmed, issues regarding the reaffirmation of circuit precedent by the circuit will not be reviewed by me.

32. 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: I have been nominated for the position of a district judge not a circuit judge. If confirmed, issues regarding the reaffirmation of circuit precedent by the circuit will not be reviewed by me.

33. 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: No. Factors to be considered in imposing a sentence are identified in 18 U.S.C. § 3553. One factor to consider is "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." *Id*. at (a)(6). If confirmed, I would consider and apply the factors identified in 18 U.S.C. § 3553.

Questions for the Record for
Senator Thom Tillis for
Questions for Mr. David Estudillo

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 it to mean instances where a judge's decision is based, in whole or in part, on the judge's personal views or opinions. Judicial activism is not appropriate.

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

   Response: In my opinion, impartiality is an expectation and a requirement.

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: A judge is required to faithfully interpret and apply the law regardless of the outcome. When this duty is performed, there is no issue to be reconciled.

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: I will faithfully follow and apply all Supreme Court and Ninth Circuit precedent on matters involving Second Amendment rights.

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: If confronted with this type of lawsuit, I would carefully review the specific facts presented in the matter and carefully review the legal arguments offered by each litigant. I also would carefully research and review Supreme Court and Ninth Circuit precedent regarding Second Amendment rights and any precedent involving emergency or health-related governmental restrictions on individual liberties. After obtaining an understanding of the facts, the legal issues presented, and any applicable precedent, I would faithfully apply that precedent to the specific facts of the lawsuit.

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: The Supreme Court has stated that "[q]ualified immunity attaches when an official's conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *City of Escondido v. Emmons*, 139 S. Ct. 500, 503 (2019) (quoting *Kisela v. Hughes*, 138 S. Ct. 1148, 1152 (2018)). This means "government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 102 S. Ct. 2727, 2738 (1982). As a sitting state court judge, I have not presided over a matter involving qualified immunity. If confirmed and presented with a matter involving qualified immunity, I would carefully review the specific facts presented in the matter and carefully review the legal arguments offered by each litigant. I also would carefully research and review Supreme Court and Ninth Circuit precedent. After obtaining an understanding of the facts, the legal issues presented, and any applicable precedent, I would faithfully apply that precedent to the specific facts of the matter before me.

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

Response: As a current state court judge, and a judicial nominee, it would be inappropriate for me to offer an opinion about whether law enforcement officers are afforded sufficient protections under the doctrine of qualified immunity. This is a policy question that is more appropriate for legislative bodies to address.

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

Response: Please see my response to Question No. 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: In my almost six years of being a state court judge, and my 16 years of private practice, I have not had the opportunity to review patent eligibility matters. I, therefore, cannot offer any opinion regarding current patent eligibility jurisprudence. I could reassure you that if a case involving questions of patent eligibility came before me, I would carefully review all relevant Supreme Court precedent, including *Alice Corp. Pty. Ltd. v. CLS Bank Intern.*, 573 U.S. 208 (2014), and carefully analyze the facts of the case applying that precedent to the best of my ability.

13. 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 No. 12.