Nomination of Daniel Domenico
to the United States District Court for the District of Colorado
Questions for the Record
January 31, 2018

QUESTIONS FROM SENATOR FEINSTEIN

1. Please respond with your views on the proper application of precedent by judges.

   a. When, if ever, is it appropriate for lower courts to depart from Supreme Court precedent?

   A lower court always must follow binding Supreme Court precedent. *See, e.g., Rodriguez de Quijas v. Shearson/American Exp., Inc.*, 490 U.S. 477, 484 (1989).

   b. Do you believe it is proper for a circuit court judge to question Supreme Court precedent in a concurring opinion? What about a dissent?

   As noted above, a circuit court judge is always bound to follow and apply Supreme Court precedent even if they disagree with it. In some rare circumstances it may be appropriate for a circuit judge to question Supreme Court precedent, but as a district judge, I would be obliged to follow all binding Supreme Court and Circuit precedent nonetheless.

   c. When, in your view, is it appropriate for a circuit court to overturn its own precedent?

   The Tenth Circuit has held that it will only overturn its precedent when the entire court is sitting *en banc*. *In re Smith*, 10 F.3d 723, 724 (10th Cir. 1993).

   d. When, in your view, is it appropriate for the Supreme Court to overturn its own precedent?

   The Court has stated that it has "the prerogative of overruling its own decisions." *Rodriguez de Quijas*, 490 U.S. at 484.

2. When Chief Justice Roberts was before the Committee for his nomination, Senator Specter referred to the history and precedent of *Roe v. Wade* as "super-stare decisis." A text book on the law of judicial precedent, co-authored by Justice Neil Gorsuch, refers to *Roe v. Wade* as a "super-precedent" because it has survived more than three dozen attempts to overturn it. (The Law of Judicial Precedent, Thomas West, p. 802 (2016).) The book explains that "superprecedent" is "precedent that defines the law and its requirements so effectively that it prevents divergent holdings in later legal decisions on similar facts or induces disputants to settle their claims without litigation." (The Law of Judicial Precedent, Thomas West, p. 802 (2016))

a. **Do you agree that *Roe v. Wade* is "super-stare decisis"? Do you agree it is "superprecedent"?**

To a district court judge, all Supreme Court precedent is "superprecedent." If I am confirmed as a lower court judge, I will be obliged to follow all Supreme Court precedent, including *Roe* and *Casey*.

b. **Is it settled law?**

Roe v. Wade is a binding precedent of the Supreme Court, and I will apply it if confirmed.

3. In *Obergefell v. Hodges*, the Supreme Court held that the Constitution guarantees same-sex couples the right to marry. **Is the holding in *Obergefell* settled law?**

Obergefell is a binding precedent of the Supreme Court, and I will apply it if confirmed.

4. At your nominations hearing, Senator Hirono asked whether you consider yourself an originalist in terms of constitutional interpretation. You responded: "So far, I've just been a lawyer. It's a bit presumptuous to say I necessarily have a judicial philosophy established. . . . But to the extent that an open and unresolved question of constitutional interpretation, in the unlikely event it came before a district court judge, I think . . . the tenets of originalism as I understand them — looking to the text, the original public meaning of the Constitution — would be one of the first places I would go."

You were often asked as Colorado's Solicitor General to consider the meaning of provisions of the Colorado Constitution. So while you may have no established judicial philosophy, it is clear you have had occasion to develop an approach to interpretation.

a. **How would you describe your approach to constitutional interpretation as Colorado's Solicitor General? Did you consider yourself an "originalist" when interpreting the state's Constitution?**

As Solicitor General, my main duty was to defend Colorado's laws, government agencies, and its people and their representatives. In doing so, I presented whichever arguments I believed would best carry out that duty. Sometimes those arguments included approaches that might be termed "originalist." But they often adopted a different approach. My own opinion was rarely, if ever, relevant.

Likewise, if confirmed as a district court judge, I would expect most questions of constitutional interpretation to be controlled by Supreme Court and Tenth Circuit precedent, which I will follow. If originalism is defined as looking to the original public meaning of constitutional terms, then I do believe that the Supreme Court has said that it is often an important consideration in constitutional interpretation. That said, I decline to adopt a label of any sort, and to the extent a true question of first impression were to come before me, I

would approach it with an open mind and allow the parties to present their arguments before adopting any particular interpretation.

5. At your nominations hearing, I asked you about an amicus brief you submitted in a marriage equality case, *Herbert v. Kitchen*. You responded that your brief had taken no position on the merits of the case, and instead was simply asking the Supreme Court to weigh in on the many cases on this issue pending in the lower courts.

   But in addition to your work on *Herbert v. Kitchen*, you also defended Colorado's same-sex marriage ban in Colorado's state courts. For instance, in a motion for summary judgment that you submitted in a case called *McDaniel-Miccio v. Colorado*, you sought to defend the ban in relevant part by arguing that "Colorado has a rational basis in seeking to encourage social institutions that help avoid the social problems of children being born and raised without both parents around to raise them." And you argued that "government marriage" — the type sought by plaintiffs in the case — was "not about recognizing or congratulating individuals who love each other," but rather was "about avoiding the problems that society encounters when childbirth outside monogamous relationships becomes widespread." (State of Colorado's Motion for Summary Judgment at 33, *McDaniel-Miccio v. Colorado*, Case No. 2014-cv-30731)

   a. **How does prohibiting LGBT couples from marrying help the state "encourage social institutions that help avoid the social problems of children being born and raised without both parents around to raise them"?**

      In *McDaniel-Miccio,* our office presented arguments as advocates defending the State of Colorado and its then-extant laws. Those arguments should not be read as necessarily reflecting my own personal beliefs. The law in this area is now settled by Supreme Court and Tenth Circuit precedent, and I would be duty-bound to follow those precedents should I be confirmed.

   b. **How does prohibiting LGBT couples from marrying help "avoid[ ] the problems that society encounters when childbirth outside monogamous relationships becomes widespread"?**

      Please see my response to Question 5.a. above.

6. At your nominations hearing, Senator Hirono asked you about an op-ed you had written in February 2016 in which you wrote the following: "If the court is political, it is because liberal politicians, lawyers, judges and academics have successfully urged it to make itself a super-legislature, and the Supreme Court is now where our most important political debates are decided, often based not on the language of the Constitution but on the personal preferences of the court's majority." (*Senate has the right to delay Supreme Court nomination process*, DENVER POST (Feb. 19, 2016))

   a. **On what basis did you conclude that "liberal politicians, lawyers, judges and academics" are the cause for the Court's politicization?**

I wrote this op-ed as part of a point-counterpoint the *Denver Post* opinion page ran on the topic. The op-ed reflected my personal view that the process of confirming Supreme Court justices had become politicized over the last several decades. This view, however, is unrelated to the role of a district court judge.

b. What Supreme Court decisions do you believe were based on the "personal preferences of the court's majority" instead of "on the language of the Constitution"?

As a nominee to a lower federal court, it would be inappropriate for me to express my personal views on the merits or demerits of a particular Supreme Court opinion. *See, e.g.*, Canon 3(A)(6), Code of Conduct for United States Judges; Canon 1, Commentary.

c. Which Justices do you believe have based decisions on their "personal preferences"?

Please see my response to Question 6.b. above.

d. If confirmed, will you follow Supreme Court precedent even if you believe that precedent was based on "the personal preferences of the Court's majority," and not "on the language of the Constitution"?

Yes.

7. As your Senate Judiciary Questionnaire and a review of your record make clear, the vast majority of your legal practice has been as an appellate lawyer. Although your Questionnaire indicates that you have some trial practice, the extent of that practice is unclear. **Please state:**

a. The approximate number of cases you have tried in federal district court. Of these, the number you tried as sole counsel, chief counsel, or associate counsel. (Your response to Question 16D indicates that you "supervised and managed scores of cases that went to final decision" and that you have "served as chief counsel in dozens of cases, particularly at the appeal stage." This question asks for the number of federal district court cases you have personally tried.)

I do not believe I can attempt to provide a precise numerical answer to these questions without being inaccurate or misleading. The position of Solicitor General in Colorado is in some ways different than the position of the same name in the federal Justice Department. As Solicitor General of Colorado, while I had responsibility for overseeing appellate litigation, and often argued cases in appellate courts, I also supervised and managed trial court litigation for the office of approximately 250 attorneys who represented all state agencies and officials. As with virtually all cases handled by the Attorney General's office, the trial

would be handled by a team of attorneys, and my participation varied depending on the case, my other obligations, and the experience of the rest of the team. As noted in the Questionnaire, over the nine years I was in that role, I supervised and assisted with scores of such trials in state and federal court, and was involved in all aspects of litigation, from the drafting of complaints to depositions to discovery disputes and motions to suppress evidence, to selecting and reviewing expert witnesses, to trial preparation to preliminary injunctions and temporary restraining orders, to trials to post-trial motions to appeals. I have appeared before magistrate judges, district judges, appellate courts, and the supreme courts at both the state and federal level. I typically elected not to be listed as counsel of record (where such a listing is applicable) given the sheer volume of the cases I was involved in and my inability to commit to handling all aspects of a given case given my broader responsibilities. I have reviewed, edited and drafted thousands of pleadings and briefs and filings over my career. Since leaving office I have also worked on cases in state and federal trial courts, including a successful § 1983 action based on the Free Speech Clause and a pending case involving complex removal and remand arguments in federal court.

b. The approximate number of discovery motions you have submitted as counsel of record in federal district court.

Please see my response to Question 7.a. above.

c. The approximate number of dispositive motions you have submitted as counsel of record in federal district court.

Please see my response to Question 7.a. above.

d. The approximate number of motions in limine you have submitted as counsel of record in federal district court.

Please see my response to Question 7.a. above.

e. The approximate number of evidentiary hearings at which you have appeared on behalf of a client in federal district court.

Please see my response to Question 7.a. above.

f. The approximate number of depositions you have personally taken in a case pending in federal district court.

Please see my response to Question 7.a. above.

g. Given your extensive appellate experience, why do you want to be a federal district court judge?

Public service is of the utmost importance to me. The opportunity to return to serving the people of Colorado and the United States as a judge, at any level, is a rare honor and opportunity. And district courts are perhaps the most important part of our federal judicial system: they are where the vast majority of cases begin and end; they are where the public typically actually interacts with the judicial system; and they are where extremely important issues of public and private importance are often resolved.

8. From 2016 to 2017, you served as co-counsel for the Douglas County School District in *Endrew F. v. Douglas County School District RE-1*. The case centered on what a school district's statutory obligations were under the Individuals with Disabilities Education Act (IDEA). Endrew F., the plaintiff, specifically alleged that under IDEA, a school district must provide an individualized education program, or IEP, that "provide[s] a child with a disability opportunities to achieve academic success, attain self-sufficiency, and contribute to society that are substantially equal to the opportunities afforded children without disabilities." You argued that adopting such a standard would be unworkable, contending that both Endrew F.'s proposed standard and the standard suggested by the Federal government "lie beyond the competence of judges to administer" and "would embroil courts in educational policy disputes best resolved by others." (Brief for Respondent, *Endrew F. v. Douglas County School District RE-1*, 137 S. Ct. 988 (2017)) The Supreme Court unanimously rejected your client's arguments, ruling 8-0 for Endrew F. Although the Court did not adopt Endrew F.'s proposed standard, it held that IDEA "requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." (137 S. Ct. at 998-99) The Court also criticized the "de minimis" standard that that Tenth Circuit had previously applied, arguing that "When all is said and done, a student offered an educational program providing 'merely more than de minimis' progress from year to year can hardly be said to have offered an education at all."

   a. **If confirmed, how would you determine whether a specific standard proposed by litigants (whether plaintiffs or defendants) was "workable"?**

      Although I am no longer involved in this case, my understanding is that it is still pending on remand and I must refrain from commenting on this question. *See* Canon 3(A)(6), Code of Conduct for United States Judges. I will note, though, that in any given case I will apply the standard set by statute or by Supreme Court or Tenth Circuit precedents if confirmed.

   b. **If confirmed, would concern over the "workability" of a standard matter more to you than statutory text, or the specific purpose of the statute Congress adopted? (In this case, the first purpose of IDEA was to "ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living")?**

      Please see my response to Question 8.a.

9. In notes for a June 2015 speech you delivered entitled "Obamacare at the Supreme court," you wrote the following: "[W]e can't rely on the courts and on litigation to defend our principles. The constitution, the separation of powers, the ideals of limited government and a federalist system can't be left to judges." (Speech Notes, "Obamacare at the Supreme Court" (June 24, 2015))

   a. What role, if any, do you believe judges play in upholding "our principles," "the Constitution" and "the separation of powers"?

   Upholding these constitutional principles is a central aspect of a judge's duty.

10. In 2013, you submitted an amicus brief on behalf of Colorado's Attorney General in *Armstrong v. Sebelius*. The case concerned a challenge to the contraceptive coverage mandate required by the Affordable Care Act. Although your brief did not address the mandate itself, it did focus on the religious rights of corporations. You argued that "[i]ndividuals do not forfeit their First Amendment rights merely because they choose to operate and associate as corporations," and you contended that "both Colorado business association law and U.S. Supreme Court precedent (aged and new) recognize that citizens are not required to sacrifice their faith when they go into business."

   a. Why did you decide to file this amicus brief?

   The Attorney General of Colorado ultimately decided which amicus briefs to file, including this one.

   b. How did you decide which amicus briefs to file when you were Colorado's Solicitor General?

   Please see my response to Question 10.a. above.

   c. Do you believe a company could legally refuse to sell a product to a mixed race couple if the company argued that doing so would violate the company's religious beliefs?

   As a pending nominee to the district court, it would be inappropriate for me to comment on cases that may come before me were I so fortunate to be confirmed. I will note, though, that were I to be confirmed, I would apply all applicable Supreme Court and Tenth Circuit precedent.

11. It has been reported that Brett Talley, a Deputy Assistant Attorney General in the Office of Legal Policy who is responsible for overseeing federal judicial nominations — and who himself was nominated to a vacancy on the U.S. District Court for the Middle District of Alabama — did not disclose to the Committee many online posts he had made on public websites.

   a. Did officials at the Department of Justice or the White House discuss with

you generally what needed to be disclosed pursuant to Question 12 of the Senate Judiciary Questionnaire? If so, what general instructions were you given, and by whom?

Without disclosing any specific advice from attorneys, my understanding was that I was to disclose all responsive material truthfully to the best of my ability.

b. **Did Mr. Talley or any other individuals at the Department of Justice or the White House advise you that you did not need to disclose certain material, including material "published only on the Internet," as required by Question 12A of the Senate Judiciary Questionnaire? If so, please detail what material you were told you did not need to disclose.**

No. It was and remains my understanding that the instructions were to disclose responsive material, including material "published only on the Internet," truthfully and to the best of my ability.

c. **Have you ever posted commentary — under your own name or a pseudonym — regarding legal, political, or social issues on public websites that you have not already disclosed to the Committee? If so, please provide copies of each post and describe why you did not previously provide it to the Committee.**

Consistent with my understanding of the Questionnaire, I have provided all responsive material, including material "published only on the Internet."

d. **Once you decided to seek a federal judicial nomination or became aware that you were under consideration for a federal judgeship, have you taken any steps to delete, edit, or restrict access to any statements previously available to the public? If so, please provide the Committee with your original comments and indicate what edits were made.**

Once I became aware I was under consideration for a federal judgeship, I reviewed the privacy settings on accounts such as Facebook, Twitter, etc., in order to ensure I was not unnecessarily compromising my family's privacy. I do not recall making any such changes, but it is possible I did. I did not edit any content, however.

12. When is it appropriate for judges to consider legislative history in construing a statute?

According to Tenth Circuit precedent, legislative history may be consulted where the text of a statute is ambiguous. *See Diallo v. Gonzales*, 447 F.3d 1274, 1282 (10th Cir. 2006).

13. According to your Senate Questionnaire, you have been an intermittent member of the Federalist Society since 2000. The Federalist Society's "About Us" webpage, states that, "[l]aw schools and the legal profession are currently strongly dominated by a form of orthodox liberal ideology which advocates a centralized and uniform society. While some members of the academic community have dissented from these views, by and

large they are taught simultaneously with (and indeed as if they were) the law." The same page states that the Federalist Society seeks to "reorder[] priorities within the legal system to place a premium on individual liberty, traditional values, and the rule of law. It also requires restoring the recognition of the importance of these norms among lawyers, judges, law students and professors. In working to achieve these goals, the Society has created a conservative and libertarian intellectual network that extends to all levels of the legal community."

a. Please elaborate on the "form of orthodox liberal ideology which advocates a centralized and uniform society" that the Federalist Society claims dominates law schools.

I did not author that statement and cannot say what the Federalist Society means by it. As a member of the Federalist Society, I was never asked to adopt a particular position on any issue, and in fact I have encountered a wide range of opinions at Federalist Society events.

b. As a member of the Federalist Society, explain how exactly the organization seeks to "reorder priorities within the legal system."

Please see my response to Question 13.a. above.

c. As a member of the Federalist Society, explain what "traditional values" you understand the organization places a premium on.

Please see my response to Question 13.a. above.

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

I reviewed my Questionnaire, did limited research, consulted individuals I practiced with in the past, and drafted responses to the questions. I then shared those responses with the Office of Legal Policy at the Justice Department, which offered suggestions and comments. I then revised my draft responses as I thought appropriate in light of those comments.

Senator Dick Durbin
Written Questions for Michael Brennan, Daniel Domenico and Adam Klein
January 31, 2018

For questions with subparts, please answer each subpart separately.

Questions for Daniel Domenico

1. Mr. Domenico, on February 19, 2016, you wrote an op-ed for the *Denver Post* entitled "Senate has the right to delay Supreme Court nomination process." In this op-ed, you expressed support for Senator McConnell's decision to block Judge Merrick Garland from receiving any consideration in the Senate. You wrote the following about the Supreme Court:

> The president and his supporters cannot credibly complain about "politicizing" the Court. Not only is that water over the dam, but the dam long ago collapsed — thanks to the very people now criticizing our representatives for asserting their constitutional power. If the Court is political, it is because liberal politicians, lawyers, judges and academics have successfully urged it to make itself a super-legislature, and the Supreme Court is now where our most important political debates are decided, often based not on the language of the Constitution but on the personal preferences of the Court's majority.

   a. **What did you mean by this statement?**

      Please see my response to Question 6.a. of Ranking Member Feinstein.

   b. **Is the Supreme Court "political"?**

      As a nominee to a lower federal court, it would be inappropriate for me to express my personal views on the merits or demerits of a particular Supreme Court opinion or Justice. *See, e.g.*, Canon 3(A)(6), Code of Conduct for United States Judges; Canon 1, Commentary.

   c. **Please cite the instances where you believe that the Supreme Court decided cases based on "the personal preferences of the Court's majority."**

      Please see my response to Question 6.b of Senator Feinstein.

d. **What are the instances you referred to when liberal politicians, lawyers, judges or academics "successfully urged" the Court to make itself a super-legislature?**

Please see my response to Question 1.b above.

2. On January 28, 2017, you appeared on a radio show and spoke about the nomination of now-Justice Neil Gorsuch. You discussed the philosophy of originalism and said "there are ways to change the Constitution, but it shouldn't be the whims of five justices in Washington simply writing what they want into the Constitution or into the law." **Are you aware of any cases in which five justices of the Supreme Court simply wrote what they wanted into the Constitution? If so, please identify those cases.**

As a nominee to a lower federal court, it would be inappropriate for me to express my personal views on the merits or demerits of a particular Supreme Court opinion or Justice. *See, e.g.*, Canon 3(A)(6), Code of Conduct for United States Judges; Canon 1, Commentary.

Nevertheless, I believe this statement was merely expressing my desire that justices not simply write their personal preferences into the law; it was not to state that any particular justices had done so in any particular instance. Alexander Hamilton expressed the thought more eloquently than I in Federalist 78: "The courts must declare the sense of the law; and if they should be disposed to exercise WILL instead of JUDGMENT, the consequence would equally be the substitution of their pleasure to that of the legislative body."

3. You also said in this January 28, 2017 radio interview that the *Hobby* Lobby decision was a "good one."

a. **Why did you say that this decision was a "good one"?**

As a nominee to a lower federal court, it would be inappropriate for me to express my personal views on the merits or demerits of a particular Supreme Court opinion or Justice. *See, e.g.*, Canon 3(A)(6), Code of Conduct for United States Judges; Canon 1, Commentary. If confirmed as a judge, I will be committed to follow established Supreme Court and Tenth Circuit precedent, including *Hobby Lobby*, and my personal views on such matters will be irrelevant.

b. **In your view, what is the basis for a decision being a "good one"?**

Please see my response to Question 3.a above.

4. You also said in your January 28, 2017 radio interview that any Trump Supreme Court nominee would be labeled as "anti-woman" and "anti-civil rights." **Why did you say that Trump nominees would be labeled anti-woman or anti-civil rights?**

   I do not recall specifically, but such a comment would be consistent with my view that that the process of confirming Supreme Court justices had become politicized over the last several decades. This view, however, is unrelated to the role of a district court judge.

5. You provided the Committee with speech notes from a speech you gave on June 24, 2015 entitled "Obamacare at the Supreme Court." According to your notes you said:

   > We can't rely on the courts and on litigation to defend our principles. The Constitution, the separation of powers, the ideals of limited government and a federalist system can't be left to judges - especially on a Court this delicately balanced, and especially given that many of its finest members are starting to get a little long in the tooth. These can't be only legal battles- they have to be battles we fight in our culture and in our political system and our neighborhoods and our schools.

   a. **Please explain what you meant by this.**

      I was simply attempting to emphasize that citizens should not look for judges and courts to resolve policy disagreements that should be resolved democratically.

   b. **Why do you refer to fighting "battles" in this statement?**

      It was merely a metaphor for the continuing disputes and agreements between proponents of different policies. The use of martial metaphors is common in American politics, but thankfully, "campaigns," "attacks," "battlegrounds," and "wars" are rarely literal in American politics.

6. **Please name the Supreme Court Justice, past or present, whose approach to constitutional interpretation you believe represents the best approach for removing a Justice's personal preferences from decisionmaking.**

   Nobody, including even a Supreme Court Justice, is perfect, but I have always admired Justice Byron White in this regard, I also find Justice Frankfurter's concurring opinion in *Youngstown Sheet & Tube Co. v. Sawyer* to be a powerful reminder of the judicial role.

7. **Do you believe it is constitutionally proper for one Senator to hold up consideration of a President's judicial nominee, as Senator McConnell essentially did by denying consideration to Judge Merrick Garland in 2016?**

As a pending nominee to the federal judiciary, I cannot comment on political or policy matters. *See, e.g.*, Canon 5, Code of Conduct for United States Judges ("A Judge Should Refrain from Political Activity"); Canon 1, Commentary.

8. **What is your favorite Supreme Court dissent, and why?**

While as a nominee to a lower federal court, it is inappropriate for me to express my personal views on the merits or demerits of a particular Supreme Court opinion or Justice, *see, e.g.*, Canon 3(A)(6), Code of Conduct for United States Judges; Canon 1, Commentary, I feel comfortable noting that I have long admired Justice Harlan's dissent in *Plessy v. Ferguson* for its bracing reminder of fundamental principles.

Nomination of Daniel Domenico to the
United States District Court
For the District of Colorado
Questions for the Record
Submitted January 31, 2018

QUESTIONS FROM SENATOR WHITEHOUSE

1. During his confirmation hearing, Chief Justice Roberts likened the judicial role to that of a baseball umpire, saying "'[m]y job is to call balls and strikes and not to pitch or bat."
   a. Do you agree with Justice Roberts' metaphor? Why or why not?

      Yes. While the metaphor is of course not a complete description of the judicial role, it does capture one fundamental aspect of being a judge: impartially applying governing rules to the facts without regard for which party (or "team") it may aid.

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

      In most instances, a judge's role is simply to apply the law to the facts, even if it results in practical consequences the judge disfavors. In some circumstances, however, the law authorizes the judge to take practical considerations into account: for example, in assessing whether to grant a preliminary injunction or other forms of equitable relief.

2. During Justice Sotomayor's confirmation proceedings, President Obama expressed his view that a judge benefits from having a sense of empathy, for instance "to recognize what it's like to be a young teenage mom, the empathy to understand what it's like to be poor or African-American or gay or disabled or old."
   a. What role, if any, should empathy play in a judge's decision-making process?

      I agree that a judge benefits from a sense of empathy that will allow him or her to better listen to and understand each litigant or witness who appears in court. Ultimately, however, a judge is obligated to administer justice and apply the law without regard to the parties' circumstances. *See* 28 U.S.C. § 453.

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

      A judge's personal life experience can help him or her to understand the arguments and facts presented in a given case, but ultimately decisions must be made based on those facts and the law, not personal preferences or other considerations.

3. In your view, is it ever appropriate for a judge to ignore, disregard, refuse to implement, or issue an order that is contrary to an order from a superior court?

No.

4. What assurance can you provide this Committee and the American people that you would, as a federal judge, equally uphold the interests of the "little guy," specifically litigants who do not have the same kind of resources to spend on their legal representation as large corporations?

   I am committed to upholding the judicial oath and to giving every litigant a fair hearing, regardless of their wealth or status, and to deciding every case impartially based on the law and facts. Having spent a decade in public service, I have seen all sides of litigation and other public legal disputes, and have defended state law and state officials in, for example, consumer protection actions and challenges to state law regarding damages in tort actions. I also have spent nearly three years at both a large, international law firm and three more running a small law firm and understand well the difference in resources between the two.

   a. In civil litigation, well-resourced parties commonly employ "paper blizzard" tactics to overwhelm their adversaries or force settlements through burdensome discovery demands, pretrial motions, and the like. Do you believe these tactics are acceptable? Or are they problematic? If they are problematic, what can and should a judge do to prevent them?

      Such tactics can be abusive and problematic. Please see my response to question 4 above. In addition, together with others in the Office of the Attorney General, I assisted in the development of a pilot project in Colorado courts aimed, in part, at finding ways to curb such abuses. Rule 26(b) of the Federal Rules of Civil Procedure has also been amended recently to provide courts with additional means of ensuring that discovery is appropriate and proportional to the case.

Nomination of Daniel Domenico, to be United States District Judge for the District of Colorado
Questions for the Record
Submitted January 31, 2018

QUESTIONS FROM SENATOR COONS

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

   If I am confirmed, I will follow Supreme Court and Tenth Circuit precedent governing substantive due process. *See, e.g.*, *Pierce v. Society of the Sisters of the Holy Names of Jesus and Mary*, 268 U.S. 510 (1925); *Skinner v. Oklahoma*, 316 U.S. 535 (1942); *Loving v. Virginia*, 388 U.S. 1 (1967); *Cruzan v. Director, Missouri Dep't of Health*, 497 U.S. 261 (1990); *Washington v. Glucksberg*, 521 U.S. 702 (1997); *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015).

   a. Would you consider whether the right is expressly enumerated in the Constitution?

      Yes.

   b. Would you consider whether the right is deeply rooted in this nation's history and tradition? If so, what types of sources would you consult to determine whether a right is deeply rooted in this nation's history and tradition?

      Yes. I would follow the Supreme Court's decision in *Washington v. Glucksberg*. I would be open to argument from the parties regarding what types of sources would be helpful in that consideration, but *Glucksberg* itself turned to the common law, treatises, and statutory law.

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

      As noted above, I would be bound by and follow Supreme Court and Tenth Circuit precedent. Precedent from other circuits may be persuasive, but is not binding.

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

      Yes. *See, e.g., Seminole Tribe of Fla. v. Fla.*, 517 U.S. 44, 66-67 (1996) (collecting decisions).

   e. Would you consider whether the right is central to "the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life"? *See Planned Parenthood v. Casey*, 505 U.S. 833, 581 (1992); *Lawrence v. Texas*, 539 U.S. 558, 574 (2003) (quoting *Casey*).

When appropriate, I would apply *Casey* and *Lawrence* along with any other binding precedent of the U.S. Supreme Court.

f. What other factors would you consider?

Please see my response to Question 1 above.

2. Does the Fourteenth Amendment's promise of "equal protection" guarantee equality across race and gender, or does it only require racial equality?

The Supreme Court has made it clear that the Equal Protection Clause applies to both race and gender. *See United States v. Virginia*, 518 U.S. 515 (1996).

a. If you conclude that it does require gender equality under the law, how do you respond to the argument that the Fourteenth Amendment was passed to address certain forms of racial inequality during Reconstruction, and thus was not intended to create a new protection against gender discrimination?

As a district judge, I would be duty bound to follow the Supreme Court and Tenth Circuit precedent holding that the Fourteenth Amendment applies to gender. Such academic arguments are irrelevant to my determination.

b. If you conclude that the Fourteenth Amendment has always required equal treatment of men and women, as some originalists contend, why was it not until 1996, in *United States v. Virginia*, 518 U.S. 515 (1996), that states were required to provide the same educational opportunities to men and women?

I have not researched the issue, nor am I in a position as a judicial nominee to speculate about the reasons the Supreme Court did or did not take up a particular issue.

c. Does the Fourteenth Amendment require that states treat gay and lesbian couples the same as heterosexual couples? Why or why not?

The Supreme Court in *Obergefell* held that the Fourteenth Amendment "does not permit the state to bar same-sex couples from marriage on the same terms as accorded to couples of the opposite sex." 135 S. Ct. at 2607.

d. Does the Fourteenth Amendment require that states treat transgender people the same as those who are not transgender? Why or why not?

Because this question is currently pending in federal courts, I am precluded from stating any opinion under the Canons applicable to judicial nominees. *See* Canon 3(A)(6), Code of Conduct for United States Judges.

3. In 2014, you served as counsel of record in two consolidated cases that challenged Colorado's ban on same-sex marriage, *McDaniel-Miccio v. Colorado* and *Brinkman v. Colorado*. The summary judgment motion you filed asserted that "Colorado has a rational

basis in seeking to encourage social institutions that help avoid the social problems of children being born and raised without both parents around to raise them." *Id.* at 33.

a. Why does a narrow view of the family "avoid . . . social problems," as the brief asserts? *Id.* at 33.

Please see my response to Question 5.a. of Senator Feinstein.

b. Do you believe that rational basis is the correct standard of review for all cases involving discrimination against LGBT individuals? Why or why not?

As a judicial nominee, it would be inappropriate for me to take a position on a question that may be subject of present or future litigation. Were I to be confirmed, I would follow applicable precedent, including the Supreme Court's decisions in *Obergefell* and *Windsor* and the Tenth Circuit's decision in *Kitchen.*

4. The Supreme Court has decided several key cases addressing the scope of the right to privacy under the Constitution.

a. Do you agree that there is a constitutional right to privacy that protects a woman's right to use contraceptives?

The Supreme Court recognized this right in *Griswold v. Connecticut*, 381 U.S. 479 (1965) and *Eisenstadt v. Baird*, 405 U.S. 438 (1972).

b. Do you agree that there is a constitutional right to privacy that protects a woman's right to obtain an abortion?

The Supreme Court recognized this right in cases such as *Roe v. Wade*, 410 U.S. 113 (1973), *Planned Parenthood v. Casey*, 505 U.S. 833 (1992) and *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292 (2016).

c. Do you agree that there is a constitutional right to privacy that protects intimate relations between two consenting adults, regardless of their sexes or genders?

The Supreme Court recognized this right in *Lawrence v.* Texas, 539 U.S. 558 (2003).

d. If you do not agree with any of the above, please explain whether these rights are protected or not and which constitutional rights or provisions encompass them.

Please see my responses to Questions 4.a, 4.b, and 4.c above.

5. In *United States v. Virginia*, 518 U.S. 515, 536 (1996), the Court explained that in 1839, when the Virginia Military Institute was established, "Higher education at the time was considered dangerous for women," a view widely rejected today. In *Obergefell v. Hodges*, 135 S. Ct. 2584, 2600-01 (2015), the Court reasoned, "As all parties agree, many same-sex couples provide loving and nurturing homes to their children, whether biological or adopted. And hundreds of thousands of children are presently being raised by such couples. . . .

Excluding same-sex couples from marriage thus conflicts with a central premise of the right to marry. Without the recognition, stability, and predictability marriage offers, their children suffer the stigma of knowing their families are somehow lesser." This conclusion rejects arguments made by campaigns to prohibit same-sex marriage based on the purported negative impact of such marriages on children.

a. When is it appropriate to consider evidence that sheds light on our changing understanding of society?

If confirmed to serve as a district judge, I would be bound by oath to apply Supreme Court and Circuit precedent govern when it is appropriate to consider such evidence. The law governing searches and seizures, for example, often requires such considerations.

b. What is the role of sociology, scientific evidence, and data in judicial analysis?

Generally, a federal district court may consider expert evidence of such matters where it may assist the trier of fact in resolving a question at issue and where the evidence meets the standards of reliability set forth by governing Supreme Court precedent. *See, e.g., Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993).

6. In his opinion for the unanimous Court in *Brown v. Board of Education*, 347 U.S. 483 (1954), Chief Justice Warren wrote that although the "circumstances surrounding the adoption of the Fourteenth Amendment in 1868 . . . cast some light" on the amendment's original meaning, "it is not enough to resolve the problem with which we are faced. At best, they are inconclusive . . . . We must consider public education in the light of its full development and its present place in American life throughout the Nation. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws." 347 U.S. at 489, 490-93.

a. Do you consider *Brown* to be consistent with originalism even though the Court in *Brown* explicitly rejected the notion that the original meaning of the Fourteenth Amendment was dispositive or even conclusively supportive?

I understand this is the subject of scholarly debate and that scholars such as former Tenth Circuit Judge and Stanford professor Michael McConnell have persuasively argued that it is. *See* Michael W. McConnell, *Originalism and the Desegregation Decisions*, 81 VA. L. REV. 947 (1995). In any event, *Brown* is established precedent that I would apply if confirmed.

b. How do you respond to the criticism of originalism that terms like "'the freedom of speech,' 'equal protection,' and 'due process of law' are not precise or self-defining"? Robert Post & Reva Siegel, *Democratic Constitutionalism*, National Constitution

Center, https://constitutioncenter.org/interactive-constitution/white-pages/democratic-constitutionalism (last visited January 31, 2018).

These terms have been extensively analyzed by the Supreme Court and Tenth Circuit, and I will apply those precedents if confirmed. The question is an interesting one, but as a district judge, it would be academic, as I would be bound by oath to faithfully apply Supreme Court and Tenth Circuit precedent defining those terms.

7. Do you agree that it is unconstitutional to bar Muslims from entering the country based on religion alone?

As a judicial nominee, it would be inappropriate for me to comment on questions raising issues that could hypothetically come before me were I to be confirmed.

8. In February 2016, almost a full year before the end of the Obama presidency, you published an opinion piece in the *Denver Post* in which you supported the decision to prevent a vote on Judge Garland's nomination. *See* Dan Domenico, *Senate has the right to delay Supreme Court nomination process*, DENVER POST, Feb. 19, 2016.

   a. Do you believe the Senate was correct when it left a Supreme Court seat vacant for over a year, limiting the ability of the court to fulfill its constitutional duties?

   Please see my responses to Question 6.a. of Senator Feinstein and Question 7 of Senator Durbin.

   b. If a vacancy were to be created in February 2020, would your position remain the same? Please explain why or why not.

   Please see my responses to Question 6.a. of Senator Feinstein and Question 7 of Senator Durbin.

9. Your name is listed on the letterhead of a Colorado Attorney General's Office advisory opinion concluding that Colorado's state-supported institutions of higher education did not have authority to grant discounted tuition to undocumented applicants. *See* Formal Opinion of John W. Suthers, Attorney General, No. 12-04, AG Alpha No. HE CO AGBDU (June 19, 2012), https://coag.gov/sites/default/files/contentuploads/ago/agopinions/john-w-suthers/2012/no-12-04.pdf. What was your role in preparing this opinion?

I do not recall the specifics surrounding the preparation of that particular opinion. My role generally would have been to review and offer comments and questions on a draft prepared by other attorneys in the office. Ultimately, however, the Attorney General approved such opinions and they reflect the opinion of the Attorney General.

Questions for the Record for Mr. Daniel Domenico
Submitted by Senator Richard Blumenthal
January 31, 2018

1. As Colorado's Solicitor General, you were closely involved in the state's efforts to oppose same-sex marriage, including filing amicus briefs and serving as counsel of record in at least two cases that challenged Colorado's ban on same-sex marriage. In speech notes for a November 2015 speech to the Colorado Bar Association, you wrote about the marriage cases generally: "We felt we had the duty to defend, despite [the governor's] misgivings, and my personal wish to have avoided having to litigate it."

    a. **Can you please elaborate on these comments? Who is the "we" who felt a duty to defend the state's ban on same-sex marriage?**

    At the time, the same-sex marriage issue was being litigated in other states, and there was likely to be a citizen initiative seeking to repeal Colorado's amendment. I believe I was expressing my belief that the question would likely have been resolved by one of those means without the filing of additional litigation. Ultimately, in fact, the issue was resolved by the Tenth Circuit's decision in *Kitchen v. Herbert* out of Utah and the Supreme Court's decision in *Obergefell v. Hodges*. The "we" I was referring to were the Governor, the Attorney General, and the various attorneys litigating the case who were duty-bound to defend Colorado's laws, regardless of their personal opinion of them.

    b. **If you wished to have avoided litigating the issue, then why did you pursue the matter as Solicitor General?**

    Please see my response to Question 1.a. above.

2. Three days before President Trump announced the nomination of Neil Gorsuch to the Supreme Court, you spoke on the Craig Silverman show about Gorsuch. You explained that Gorsuch's particular brand of originalism prevents judges from "changing the Constitution [because] there are ways to change the Constitution … but it shouldn't [be] the whims of five Justices in Washington simply … writing what they want into the Constitution or into the law." You also said that Gorsuch would "reinvigorate" the structural protections inherent in the Constitution that have not been important to some "other people" over the last decade.

    a. **In your view, what is an example of the "whims of five Justices in Washington simply writing what they want into the Constitution or into the law"?**

    Please see my response to Question 2 of Senator Durbin.

b. What are the structural protections that you believed Neil Gorsuch would "reinvigorate"?

I do not recall specifically what I was referring to at that time, but the most fundamental structural protections in our Constitutional are federalism and separation of powers.

c. Who are the "other people" who ignored these protections?

As a nominee to a lower federal court, it would be inappropriate for me to express my personal views on the merits or demerits of a particular court opinion, judge, or political figure. *See, e.g.*, Canon 3(A)(6), Code of Conduct for United States Judges; Canon 1, Commentary. I will note, however, that among the reasons an independent judiciary is important is that it can resist the impulses of the legislative and executive branches to seek to concentrate power. "Ambition must be made to counteract ambition," as Madison wrote in Federalist #51.

Questions for the Record for Daniel Domenico
From Senator Mazie K. Hirono

1. Michael. Brennan, who appeared on the first panel at your hearing, has written that, "[t]he oath of a federal justice or judge … makes express that his or her duty is first to the Constitution and the laws of the United States, not to other judges' interpretation thereof. That duty includes reexamination of precedent to ensure that the correct law is applied."

Do you believe a judge has a duty to follow a higher court's interpretation of a case or a duty to reexamine precedent?

Please see my response to Question 1.a of Ranking Member Feinstein.

2. In a June 2015 speech, you indicated in your notes that the overall theme of your speech was that "we can't rely on the courts and on litigation to defend our principles" and that [t]hese can't be only legal battles – they have to be battles we fight in our culture and in our political system and our neighborhoods and our schools."

What battles do you think need be fought in our culture, our political system, our neighborhoods and our schools?

Please see my response to Question 5 of Senator Durbin. I will add that as a pending nominee to the federal judiciary, I cannot and should not comment on political or policy matters. *See, e.g.*, Canon 5, Code of Conduct for United States Judges ("A Judge Should Refrain from Political Activity"); Canon 1, Commentary.

Nomination of Daniel Desmond Domenico to the
United States District Court for the District of Colorado
Questions for the Record
Submitted January 31, 2018

QUESTIONS FROM SENATOR BOOKER

1. According to a Brookings Institute study, African Americans and whites use drugs at similar rates, yet blacks are 3.6 times more likely to be arrested for selling drugs and 2.5 times more likely to be arrested for possessing drugs than their white peers.[1] Notably, the same study found that whites are actually *more likely* to sell drugs than blacks.[2] These shocking statistics are reflected in our nation's prisons and jails. Blacks are five times more likely than whites to be incarcerated in state prisons.[3] In my home state of New Jersey, the disparity between blacks and whites in the state prison systems is greater than 10 to 1.[4]

    a. Do you believe there is implicit racial bias in our criminal justice system?

    I believe that, unfortunately, racial bias continues to exist in society. If I am confirmed as a judge, I am committed to doing whatever the law authorizes a judge to do to punish or prevent any illegal act motivated by racial bias and to stamp it out from our institutions.

    b. Do you believe people of color are disproportionately represented in our nation's jails and prisons?

    Please see my answer to Question 1.a. above. As a nominee to the district court, it would be inappropriate for me to give the impression I have prejudged the reliability of any particular studies on this matter.

    c. Prior to your nomination, have you ever studied the issue of implicit racial bias in our criminal justice system? Please list what books, articles, or reports you have reviewed on this topic.

    It would be an overstatement to say I have carefully studied the issue, but I have examined the issue at various points. In particular, I recall reading extensively in briefs and articles about the crack/powder cocaine sentencing disparity while clerking, and learning about the horrific 1921 Tulsa race riot around the same time. Later, although the federal sentencing law was not directly relevant to my

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[1] JONATHAN ROTHWELL, HOW THE WAR ON DRUGS DAMAGES BLACK SOCIAL MOBILITY, BROOKINGS INSTITUTE (Sept. 30, 2014), *available at* https://www.brookings.edu/blog/social-mobility-memos/2014/09/30/how-the-war-on-drugs-damages-black-social-mobility/.

[2] *Id.*

[3] ASHLEY NELLIS, PH.D., THE COLOR OF JUSTICE: RACIAL AND ETHNIC DISPARITY IN STATE PRISONS, THE SENTENCING PROJECT 14 (June 14, 2016), *available at* http://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/.

[4] *Id.* at 8.

work in the Attorney General's Office, I reviewed a variety of articles and writings during the time surrounding the passage of the Fair Sentencing Act. I also looked into arguments related to the death penalty while serving as Solicitor General. And when my wife and I were in the process of preparing to be licensed in the Denver foster care system, issues regarding racial disparities in the criminal justice and foster care systems were highlighted for me.

2. According to a Pew Charitable Trusts fact sheet, in the 10 states with the largest declines in their incarceration rates, crime fell an average of 14.4 percent.[5] In the 10 states that saw the largest increase in their incarceration rates, crime decreased by an 8.1 percent average.[6]

   a. Do you believe there is a direct link between increases of a state's incarcerated population and decreased crime rates in that state? If you believe there is a direct link, please explain your views.

      Crime rates are affected by a wide range of factors, and it would be inappropriate for me to give the impression that I have prejudged the reliability of any particular studies or conclusions. If confirmed as a judge, I will decide each case based on the facts established in court and the governing law and precedent.

   b. Do you believe there is a direct link between decreases of a state's incarcerated population and decreased crime rates in that state? If you do not believe there is a direct link, please explain your views.

      Please see my response to Question 2.a. above.

3. Do you believe it is an important goal for there to be demographic diversity in the judicial branch? If not, please explain your views.

   Yes.

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[5] THE PEW CHARITABLE TRUSTS, NATIONAL IMPRISONMENT AND CRIME RATES CONTINUE TO FALL 1 (Dec. 2016), *available at* http://www.pewtrusts.org/~/media/assets/2016/12/national_imprisonment_and_crime_rates_continue_to_fall_web.pdf.

[6] *Id.*

Questions for the Record from Senator Kamala D. Harris
Submitted January 17, 2018
For the Nominations of

Daniel Domenico, to be United States District Judge for the District of Colorado

Susan Baxter, to be United States District Judge for the Western District of Pennsylvania

Marilyn Horan, to be United States District Judge for the Western District of Pennsylvania

1. District court judges have great discretion when it comes to sentencing defendants. It is important that we understand your views on sentencing, with the appreciation that each case would be evaluated on its specific facts and circumstances.

   a. **What is the process you would follow before you sentenced a defendant?**

   If confirmed, I will take great care in every case to impose a sentence that is "sufficient, but not greater than necessary" to achieve the sentencing purposes that Congress has laid forth. 18 U.S.C. § 3553(a)(2). I will consider arguments of counsel or statements of witnesses in court, look to governing statutes, the presentence report, and the sentencing guidelines, as well as any guidance from Supreme Court or Circuit precedent, and apply the law to the circumstances of the particular case.

2.

   a. **As a new judge, how do you plan to determine what constitutes a fair and proportional sentence?**

   Please see my response to Question 1.a. above.

   b. **When is it appropriate to depart from the Sentencing Guidelines?**

   Both the Guidelines themselves and Supreme Court precedent, including *U.S. v. Booker*, explain circumstances and considerations that can justify a departure or variance from the range specified in the Guidelines. Those include the factors discussed in 18 U.S.C. § 3553(a). I would carefully review those factors and precedents, provide the advance notice required by Fed. R. Crim. P. 32(h), and consider arguments and evidence presented by the parties before departing from the Guidelines.

   c. **Judge Danny Reeves of the Eastern District of Kentucky – who also serves on the U.S. Sentencing Commission – has stated that he believes mandatory minimum sentences are more likely to deter certain types of crime than discretionary or indeterminate sentencing.**[1]

[1] https://www.judiciary.senate.gov/imo/media/doc/Reeves%20Responses%20to%20QFRs1.pdf

i. **Do you agree with Judge Reeves?**

The wisdom of mandatory minimum sentences is a policy matter committed to Congress. If I am confirmed as a district court judge, I will be obligated to apply constitutional statutes requiring minimum sentences, and it therefore would be inappropriate for me to comment further.

ii. **Do you believe that mandatory minimum sentences have provided for a more equitable criminal justice system?**

Please see my response to Question 2.c.i. above.

iii. **Please identify instances where you thought a mandatory minimum sentence was unjustly applied to a defendant.**

Please see my response to Question 2.c.i. above.

iv. **Former-Judge John Gleeson has previously criticized mandatory minimums in various opinions he has authored, and has taken proactive efforts to remedy unjust sentences that result from mandatory minimums.[2] If confirmed, and you are required to impose an unjust and disproportionate sentence, would you commit to taking proactive efforts to address the injustice, including:**

1. **Describing the injustice in your opinions?**

   If confirmed and confronted with such a situation, I would consider taking proactive efforts to address the injustice consistent with applicable law, rules, precedent and my ethical obligations, keeping in mind that mandatory minimum sentencing and charging decisions are largely the purview of the legislative and executive branches..

2. **Reaching out to the U.S. Attorney and other federal prosecutors to discuss their charging policies?**

   Please see my response to Question 2.c.iv.1. above.

3. **Reaching out to the U.S. Attorney and other federal prosecutors to discuss considerations of clemency?**

   Please see my response to Question 2.c.iv.1. above.

[2] *See, e.g.*, "Citing Fairness, U.S. Judge Acts to Undo a Sentence He Was Forced to Impose," NY Times, July 28, 2014, https://www.nytimes.com/2014/07/29/nyregion/brooklyn-judge-acts-to-undo-long-sentence-for-francois-holloway-he-had-to-impose.html

d. 28 U.S.C. Section 994(j) directs that alternatives to incarceration are "generally appropriate for first offenders not convicted of a violent or otherwise serious offense." If confirmed as a judge, would you commit to taking into account alternatives to incarceration?

Yes, when authorized by law and where appropriate in the circumstances.

3. Judges are one of the cornerstones of our justice system. If confirmed, you will be in a position to decide whether individuals receive fairness, justice, and due process.

a. Does a judge have a role in ensuring that our justice system is a fair and equitable one?

Yes.

b. Do you believe that there are racial disparities in our criminal justice system? If so, please provide specific examples. If not, please explain why not.

Please see my response to Question 1 of Senator Booker.

4. If confirmed as a federal judge, you will be in a position to hire staff and law clerks.

a. Do you believe that it is important to have a diverse staff and law clerks?

Yes.

b. Would you commit to executing a plan to ensure that qualified minorities and women are given serious consideration for positions of power and/or supervisory positions?

If confirmed, I will seek to ensure that all qualified applicants are given serious consideration and that all qualified individuals are encouraged to apply.