Senator Dick Durbin
Chair, Senate Judiciary Committee
Written Questions for Nancy Abudu
Nominee to be United States Circuit Judge for the Eleventh Circuit
May 4, 2022

1. **You have spent most of your career protecting the civil rights and civil liberties of all Americans. In particular, you have defended the right to vote. As an advocate, you have exercised your First Amendment rights and commented on a number of topics. However, now you have been nominated to set aside your advocacy and serve as a federal judge.**

    a. **How do you understand the difference between serving as an advocate and serving as a judge?**

    Response: My experience as a staff attorney with the United States Court of Appeals for the Eleventh Circuit early on in my career helped me to understand the critical role that judges play in the everyday lives of people and the importance of ensuring that all litigants appear before a judge who is fair and impartial. Thus, although I have spent several years as a litigator, I understand the distinction between the roles and responsibilities of an advocate, who has an ethical obligation to zealously represent their client, as opposed to a judge who must be fair, impartial, unbiased, and apply the law to the facts of the actual case or controversy before the court.

    b. **Do you believe you can fairly decide cases before you, without regard to who the party is or what their political or personal beliefs are?**

    Response: Yes.

2. **Over the course of your career as a civil rights lawyer, you have worked at several organizations. In 2019, you joined the Southern Poverty Law Center (SPLC) to help establish its Voting Rights Practice Group. As you explained in your Senate Judiciary Questionnaire and at the hearing, your work now primarily involves overseeing voting rights litigation.**

    a. **Can you elaborate on your role at SPLC?**

    Response: SPLC hired me in February 2019 to serve as the organization's first-ever deputy legal director for the organization's voting rights practice group. In that position, my primary responsibilities were to develop and manage a docket of voting rights cases with a focus on protecting the rights of communities of color living in the southern United States. I also supervised the publication of reports related to the experiences that voters in the South faced prior to, during, and soon after the 2020 elections. In or around November 2021, I was promoted to the position of Director of Strategic Litigation. In that role, my day-to-day

responsibilities include supervising the deputy legal directors of our other practice areas. The organization also has a "special litigation" program which focuses on the representation of individuals who have been targeted, harassed, and/or stalked based on immutable characteristics such as race, ethnicity, nationality, and gender. While I participate in the review and approval of litigation requests, the day-to-day management of cases and litigation decisions are made by the deputy legal directors and litigation teams.

b. Do you have any role in the organization's work designating hate groups?

Response: No.

Senator Chuck Grassley, Ranking Member
Questions for the Record
Ms. Nancy G. Abudu
Nominee to be United States Circuit Judge for the Eleventh Circuit

1. **During your hearing before the Senate Judiciary Committee, you repeatedly declined to condemn your employer, the Southern Poverty Law Center (SPLC), for characterizing as "hate groups" organizations like the Alliance Defending Freedom, the Family Research Council, the American Family Association, Christian non-profit organizations, churches, and a myriad of other groups with whom the SPLC has political disagreements. During the hearing, you suggested that you are not familiar with these "hate group" designations and the process the SPLC used to arrive at this inflammatory description. Please review and familiarize yourself with the SPLC's "Hate Map," database of "Extremist Groups," and other relevant materials. Having reviewed these materials, do you, as a senior employee at the SPLC, agree with the SPLC's decisions to characterize the aforementioned well-regarded conservative organizations as hate groups? If not, what steps will you take to address this issue within your organization?**

   Response: As the SPLC's Director of Strategic Litigation, my responsibility is to oversee and provide general management over the organization's docket. I do not work in the branch of the organization that is solely responsible for designating certain organizations as hate groups and, therefore, cannot opine as to that branch's decisions.

2. **In a June 12, 2020 blog post for the SPLC, you wrote that "[o]ur criminal justice system is one of the most inhumane examples of how racial discrimination operates and can ruin people's lives forever." Which criminal justice systems were you comparing ours to when you labeled America's system "one of the most inhumane"?**

   Response: Much of my career has been spent as an advocate for the voting rights, civil rights, and civil liberties of individuals who could not afford to pay for legal representation. That advocacy has occurred in the form of blog posts, press releases, interviews, and other forms of public education. That said, I well understand the difference between the role of an advocate and that of a judge. Our system of laws functions when judges set aside their prior advocacy on behalf of any particular client, as well as any personal views they might have, and rule solely based on the law and the facts of the case before them. I commit wholeheartedly to doing so pursuant to the judicial oath set forth in 28 U.S.C. § 453.

   With respect to this blog post, which I wrote as the deputy legal director for voting rights at the SPLC, I was referring, for example, to the fact that the United States has the largest percentage of incarcerated people per capita than any other country in the world according to the Vera Institute of Justice. As my response to Question 3 below notes, felony disenfranchisement laws have a disproportionate impact on people of color.

3. **In that same June 12, 2020 blog post, you also suggested that, because of laws prohibiting felons from voting, our system is "practically the same system as during slavery." Do you believe that there are any aspects of the American criminal justice system today that are "practically the same" as during slavery?**

   Response: Much of my career has been spent as an advocate for the voting rights, civil rights, and civil liberties of individuals who could not afford to pay for legal representation. That advocacy has occurred in the form of blog posts, press releases, interviews, and other forms of public education. That said, I well understand the difference between the role of an advocate and that of a judge. Our system of laws functions when judges set aside their prior advocacy on behalf of any particular client, as well as any personal views they might have, and rule solely based on the law and the facts of the case before them. I commit wholeheartedly to doing so pursuant to the judicial oath set forth in 28 U.S.C. § 453.

   In this part of the blog post, which I wrote as the deputy legal director for voting rights at the SPLC, I was referring to the disproportionate impact that felony disenfranchisement laws have had on people of color. For example, the Sentencing Project reports that 1 in 16 African Americans has lost the right to vote due to a felony conviction as compared to 1 in 59 non-Black voters.

4. **In a February 2020 article, you are quoted as saying that "Jim Crow is alive and well, and continues to cast a long shadow on elections across the country." Do you believe that Jim Crow is "alive and well" in the United States of America? If yes, please provide support for your view. If no, please explain why you made this statement.**

   Response: Much of my career has been spent as an advocate for the voting rights, civil rights, and civil liberties of individuals who could not afford to pay for legal representation. That advocacy has occurred in the form of blog posts, press releases, interviews, and other forms of public education. That said, I well understand the difference between the role of an advocate and that of a judge. Our system of laws functions when judges set aside their prior advocacy on behalf of any particular client, as well as any personal views they might have, and rule solely based on the law and the facts of the case before them. I commit wholeheartedly to doing so pursuant to the judicial oath set forth in 28 U.S.C. § 453.

   With respect to that statement, which I wrote as the deputy legal director for voting rights at the SPLC, I was highlighting the increased burdens that people of color have faced in terms of exercising their fundamental right to vote which some historians, law professors, and other social scientists have compared to Jim Crow.

5. **In a 2020 press release for the SPLC, you claimed that "systemic racism" is "embedded in the criminal justice system and other parts of our society."**

   a. **Please define the term "systemic racism" as you understand it.**

Response: My general understanding is that the phrase "systemic racism" refers to statistical disparities in how certain protected classes are treated in various institutions in our society such as the criminal justice system and education system.

b. **In what other parts of society is "systemic racism" embedded in your view?**

Response: As a judicial nominee, I defer to policymakers and academicians to evaluate and comment on which parts of our society might fall within the category of institutions that are designed or act in a manner to disadvantage certain protected classes.

6. **In an August 2021 article for the SPLC, you suggested that "[t]o protect the future of American democracy, the Senate may need to make the body majority-rule by abolishing the filibuster. So be it. The danger of not doing so is far too significant for our nation and generations to come." What, in your view, is the danger to American democracy if the Senate fails to abolish the filibuster and move to majority-rule?**

Response: Much of my career has been spent as an advocate for the voting rights, civil rights, and civil liberties of individuals who could not afford to pay for legal representation. That advocacy has occurred in the form of blog posts, press releases, interviews, and other forms of public education. That said, I well understand the difference between the role of an advocate and that of a judge. Our system of laws functions when judges set aside their prior advocacy on behalf of any particular client, as well as any personal views they might have, and rule solely based on the law and the facts of the case before them. I commit wholeheartedly to doing so pursuant to the judicial oath set forth in 28 U.S.C. § 453.

I made this statement in my capacity as the deputy legal director for voting rights at the SPLC which works to eliminate discriminatory voting practices. SPLC supported both the John Lewis Voting Rights Advancement Act and the Freedom to Vote Act. I defer to policymakers and the public to address procedural rules that impact Congress' role and responsibilities.

7. **In a July 2020 news article, you are quoted as saying that the "problem" with Southern states when it comes to voting laws "is they're not always doing the right thing and the resentment they feel is that historically, the federal government has not allowed them to get away with it."**

a. **What did you mean by "get away with it?"**

Response: The phrase "get away with it" is generally understood to relate to a wrongful act that is committed without accountability.

b. **Please identify the states you believe feel "resentment" resulting from the federal government actions you were referring to in your quote.**

Response: As an attorney with the SPLC, my work is concentrated in the Deep South, and I have lived most of my life in the Deep South. To my recollection, I had no particular state in mind and instead was referring to the experiences of voters in the Deep South in general.

8. **In a July 2020 SPLC article, you suggested that Florida is engaged in a "war to strip poor and low-income people of all political power." In a February 2020 post for the SPLC, you wrote that "Governor DeSantis is digging in his heels to ensure poor people in his state are blocked from voting."**

a. **Do you still believe that Florida is engaged in a "war" to "strip poor and low-income people of all political power?" If so, please identify who is waging this war and how. If not, why did you make this statement?**

Response: Much of my career has been spent as an advocate for the voting rights, civil rights, and civil liberties of individuals who could not afford to pay for legal representation. That advocacy has occurred in the form of blog posts, press releases, interviews, and other forms of public education. That said, I well understand the difference between the role of an advocate and that of a judge. Our system of laws functions when judges set aside their prior advocacy on behalf of any particular client, as well as any personal views they might have, and rule solely based on the law and the facts of the case before them. I commit wholeheartedly to doing so pursuant to the judicial oath set forth in 28 U.S.C. § 453.

With respect to the statement, which I wrote as the deputy legal director for voting rights at the SPLC, I was highlighting the various state laws that had been passed and signed into law that my clients argued unconstitutionally infringed upon their fundamental right to vote.

b. **Do you still believe Governor DeSantis is seeking to ensure that poor people are "blocked from voting?" If so, what evidence for this claim do you have? If not, why did you make this statement?**

Response: The SPLC is representing a community group – the Harriett Tubman Freedom Fighters - in a legal challenge to Florida Senate Bill 90, *League of Women Voters of Florida, Inc. v. Lee*, No. 4:21cv187/MW/MAF, 2022 WL 969538 (N.D. Fla. Mar. 31, 2022), appeal filed, *League of Women Voters of Florida v. Lee*, No. 22-11143 (11th Cir.). I am counsel of record in that case. The district court's ruling in our client's favor can be found at the citation above and the decision details the evidence introduced in the case to support the court's ruling. To the extent this question seeks privileged information protected by attorney work product, attorney common interest agreements, and attorney-client

privilege, I can offer no further response. If confirmed, I will recuse myself from this case.

9. **During a 2021 presentation for the Georgia Legislative Black Caucus, you said that Georgia has a "culture of law enforcement that still targets Black and Brown people with laws meant to protect them." Which law enforcement agencies or groups within Georgia do you believe are using laws to "target" Black and Brown people?**

   Response: I do not remember the context for this statement. I would note that I have represented law enforcement in my career and have worked collaboratively with various law enforcement departments.

10. **Discussing the Georgia legislature in April 2021, you said that "Georgia continues to be a bad actor," and that the state legislature "is committed to keeping us in the past and that is scary."**

    a. **Are there any other states that you believe continue to be "bad actors?" Why?**

       Response: Any statements I made during that presentation were made in my role as the deputy legal director for voting rights at the SPLC. To my recollection, I was not referring to any other states when making that comment.

    b. **What did you mean when you said that the Georgia legislature is "committed to keeping us in the past?"**

       Response: That statement, again made in my capacity as the deputy legal director for voting rights at the SPLC, was intended to convey the sentiments that my clients have expressed regarding the impact that Georgia Senate Bill 202 has had or might have on their ability to exercise their fundamental right to vote. For many of my clients who grew up during the Jim Crow era and civil rights movement, they have expressed that the impact of these laws, to them, is reminiscent of their experiences during earlier periods in our Nation's history when people of color faced legalized barriers to the ballot box.

11. **In a 2014 article for the National Bar Association Magazine, you wrote that the Supreme Court's decision in *Shelby County v. Holder* "is an example of the Court's refusal to understand and address the continuing impact that racial discrimination has on political participation by minority voters."**

    a. **Please identify any other examples of the Supreme Court's cases that, in your view, show a "refusal to understand and address the continuing impact" of racial discrimination.**

Response: As a judicial nominee, my commitment is to follow the Supreme Court and Eleventh Circuit's precedent with respect to claims regarding alleged infringements on the right to vote.

b. **Please describe the legal framework you would use as a federal judge to evaluate a claim concerning violations of the Voting Rights Act or the right to vote. In your answer, please cite to any applicable Eleventh Circuit or Supreme Court precedent.**

Response: If confirmed, the Supreme Court's decisions in *Shelby County, AL v. Holder*, 570 U.S. 529 (2013) and *Brnovich v. Democratic National Committee*, 141 S. Ct. 2321 (2021) are examples of the precedent I would follow.

c. **If you are confirmed, how will your view that the Supreme Court refuses to understand and address racial discrimination impact your ability to faithfully apply the Court's binding precedents?**

Response: If I am confirmed, I will adhere to Supreme Court and Eleventh Circuit precedent.

12. **In an October 2020 article for the SPLC, you described the Supreme Court's decision in *Ross v. National Urban League* as "anti democratic." In a separate statement, you said that the Court "issued yet another serious blow to our democratic system of government by ignoring the Constitution's requirement that the Department of Commerce conduct a complete and accurate census count."**

a. **In your view, what are the other "serious blows to our democratic system of government" that the Supreme Court has issued?**

Response: The statements in that article were made in my role as the deputy legal director for voting rights at the SPLC. As Question 11 noted, I had made prior statements as an advocate that were critical of *Shelby Co. v. Holder*. If I am confirmed, I will abide by Supreme Court and Eleventh Circuit precedent.

b. **Are there any other Supreme Court decisions that you believe are anti-democratic?**

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

c. **In your view, how should a federal judge treat Supreme Court cases that are anti-democratic or that deal "serious blows" to our system of government?**

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

13. **Is a law requiring a convicted criminal to pay restitution to a victim before becoming eligible to vote a poll tax? Why or why not?**

Response: The Eleventh Circuit ruled in *Jones v. Governor of Florida*, 975 F.3d 1016 (11th Cir. 2020) that Florida's felony disenfranchisement law, which requires people with criminal convictions to fully satisfy the legal financial obligations associated with their sentence as a precondition to register and vote, does not violate the Twenty-Fourth Amendment's prohibition on poll taxes. If confirmed, I will follow that precedent.

14. **In *Gainesville Woman Care LLC v. Florida*, an abortion clinic argued that a 24-hour waiting period requirement violated state privacy protections. A Florida state judge agreed. You applauded the ruling, saying in a 2018 ACLU article that a 24-hour requirement is "an insult to women." You have also described the requirement as "downright cruel."**

    a. **Why, in your view, is waiting 24 hours before having an abortion "an insult to women" and "downright cruel?"**

    Response: I made this statement on behalf of the ACLU of Florida in my capacity as its legal director and as the lead attorney in the case. If confirmed, I will adhere to Supreme Court and Eleventh Circuit precedent.

    b. **If you are confirmed as a federal judge, can you reassure the Committee that you will faithfully apply all Supreme Court precedents on abortion?**

    Response: Yes.

15. **In a 2020 article for the American Bar Association, you described some modern-day Americans as a "new generation of segregationists." You wrote that "many white residents, whether in rural or urban communities, have tended to resist efforts at true integration. They tend to publicly express support for the dream of multicultural neighborhoods while at the same time do their best to make sure they live in predominantly white areas, their children go to predominantly white schools, and the opportunities for social interaction among the races remain low." Do you still believe this statement?**

    Response: That ABA article was written in my capacity as the deputy legal director for voting rights at the SPLC. The purpose of that article was to provide an overview of cases in which courts have found that certain school redistricting plans were enacted for a discriminatory purpose. *See, e.g.*, *City of Birmingham v. Community Free Dist.*, 336 So.2d 502 (Ala. 1976).

16. **In a 2021 virtual panel discussion, you described the "encroachment of privatization" in education as a "terrifying landscape." You also suggested that "we are not in an environment or a culture where we can rely on our state legislators to do the right thing by our children, especially if they are black or brown."**

    a. **Why do you believe that privatization in education is "terrifying"?**

Response: My participation on that panel was as the deputy legal director for voting rights at the SPLC. Those comments reflected the sentiments of children and families who have been my clients and who believe that the quality of their public schools continues to deteriorate in part due to a diversion of resources from public schools to private institutions.

b. **Why do you believe that Americans cannot rely on their state legislators "to do the right thing by our children, especially if they are black or brown"?**

Response: Please see my response to Question 16a.

17. **Please define the term "Critical Race Theory."**

Response: Black's Law Dictionary (11th ed. 2019) defines critical race theory as a "reform movement within the legal profession, particularly within academia, whose adherents believe that the legal system has disempowered racial minorities."

18. **During a 2021 virtual panel discussion, you suggested that for progressive educators to avoid negative reactions to Critical Race Theory, they need to "think carefully about the language we want to adopt and how do we control the narrative and the message," adding that opponents of CRT "completely mischaracterize what it is we're trying to achieve."**

a. **What is it that you are trying to achieve by supporting the teaching of Critical Race Theory in schools?**

Response: To be clear, I have never advocated for any specific curriculum to be taught in any educational institution, critical race theory or otherwise. Part of the SPLC's mission is to ensure that all children, especially children living in poverty and those with disabilities, have equal access to education. As a judicial nominee, I recognize that issues related to school curriculum involve policy matters that should be addressed by parents, educators, administrators, and elected officials to determine what is in the best interest of children in their school systems.

b. **What are the mischaracterizations of Critical Race Theory you were referring to?**

Response: In addition to the definition provided in response to Question 17, there do appear to be multiple definitions of the term "critical race theory." Any comments I made were intended to express that people might be operating from different definitions or interpretations of the term.

19. **In 2018, while you were working for the ACLU of Florida, you worked on a lawsuit opposing a Miami ordinance that banned sex offenders from living within 2,500 feet from a school. You described the ordinance as "unduly harsh" and suggested that**

the elected officials who supported the ordinance were "legislating people into endless cycles of homelessness and poverty."

a. **Why is it "unduly harsh" to prevent sex offenders from living within 2,500 feet from a school?**

Response: Criminal offenses against children are among the most horrifying acts that can be committed. My work in *Doe v. Miami-Dade County*, 846 F.3d 1180 (11th Cir. 2017) was in my capacity as the legal director of the ACLU of Florida. The organization filed that lawsuit to enhance public safety given the unstable and transitory nature of housing for such individuals. Restrictions on where individuals convicted of such crimes can live can have the perverse effect of reducing public safety because these laws increase the likelihood that such individuals will be unable to find housing. In addition, homelessness makes such individuals even harder for law enforcement to monitor.

b. **How close to a school do you believe sex offenders should be permitted to reside?**

Response: Please see my response to Question 19(a).

20. **In a 2016 article for the America Bar Association, you advocated for laws that "would allow noncitizens to vote in local elections," and suggested that opponents of such legislation are "trying to incite hysteria that undocumented immigrants are also taking over the ballot box in addition to 'our country.'"**

a. **Does Congress have the authority to grant foreign nationals the right to vote in federal elections?**

Response: Article 1, Section 4 of the Constitution, known as the Elections Clause, provides that: "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators."

b. **In your view, in which elections should noncitizens be permitted to vote?**

Response: In the article, I noted that some cities allow noncitizens to vote in local elections.

21. **In 2017, you signed a letter urging Miami to become a sanctuary city and to "remain one among hundreds of jurisdictions across the United States that have refused to spend taxpayer dollars on immigration enforcement that undermines community safety." The letter added that enforcing federal immigration law "would make Miami-Dade's neighborhoods less safe by undermining trust between immigrant communities and law enforcement officials."**

a. **Under what circumstances is it appropriate for attorneys to encourage local officials to violate or refuse to enforce federal law?**

Response: Attorneys have an ethical obligation to zealously represent the interests of their clients within the bounds of the law.

b. **How, in your view, does the enforcement of federal immigration law make Miami's neighborhoods less safe?**

Response: As a judicial nominee, I defer to state policymakers to determine the best ways to ensure public safety.

c. **If you are confirmed, will you commit to fully and faithfully apply federal immigration law and related Supreme Court and Eleventh Circuit precedent?**

Response: Yes.

22. **Please define the term "Restorative Justice."**

Response: My general understanding of restorative justice is that it allows for a victim of a crime and the offender to meet outside of a judicial, adversarial forum to reach a resolution that focuses on respect for the victim, accountability on the part of the offender, and the offender's reintegration into society within a supportive community that enhances rehabilitation and prevents recidivism.

23. **In a 2017 law review article, you wrote that school disciplinary policies are "emblematic of an ongoing acceptance of police brutality and violence against certain children." Your article advocated for the use of Restorative Justice instead of criminal justice in the context of schools. Do you still believe that there are school disciplinary policies in place today that are "emblematic of an ongoing acceptance of police brutality and violence against certain children?" If yes, please identify or provide some examples of these policies.**

Response: Much of my career has been spent as an advocate for the voting rights, civil rights, and civil liberties of individuals who could not afford to pay for legal representation. That advocacy has occurred in the form of blog posts, press releases, interviews, and other forms of public education. That said, I well understand the difference between the role of an advocate and that of a judge. Our system of laws functions when judges set aside their prior advocacy on behalf of any particular client, as well as any personal views they might have, and rule solely based on the law and the facts of the case before them. I commit wholeheartedly to doing so pursuant to the judicial oath set forth in 28 U.S.C. § 453.

I made this statement while I was the legal director of the ACLU of Florida which had brought legal challenges to school disciplinary policies that had disproportionate effects on children of color. As a judicial nominee, I defer to policymakers as to the best approaches to school discipline.

24. **In 2015, you signed multiple letters to the Florida Board of County Commissioners asking the Commission to allow atheists to "deliver invocations at the opening of Board of County Commissioners meetings." One of these letters suggested that the "exclusion of nontheists from the prayer opportunity runs contrary to several provisions of the United States Constitution." In 2017, you wrote a letter to the Florida Department of Children and Families criticizing chaplains, pastors, and government officials for talking about their personal faith during a Faith Symposium. Why, in your view, does the Constitution require allowing atheists to pray at government meetings but prohibit Christians from speaking about their faith during events like the Faith Symposium?**

Response: In *Town of Greece, NY v. Galloway*, 572 U.S. 565 (2014), the Supreme Court held that the town's practice of allowing chaplains to provide an opening prayer at the beginning of its board meetings did not violate the First Amendment's Establishment Clause. If confirmed, I will follow all binding precedent in the Supreme Court and Eleventh Circuit, including *Town of Greece*.

25. **Please describe your understanding of Supreme Court and Eleventh Circuit precedents concerning the permissibility of requiring prospective voters to show identification to vote.**

Response: In *Crawford v. Marion County*, 553 U.S. 181 (2008), the Supreme Court held that voter photo identification laws are per se constitutional. If confirmed, I will follow all binding precedent in the Supreme Court and Eleventh Circuit, including *Crawford*.

26. **What Eleventh Circuit and Supreme Court precedent would you apply in evaluating whether a redistricting map is racially gerrymandered?**

Response: In *Thornburg v. Gingles*, 478 U.S. 30 (1986), the Supreme Court held that, to establish a violation under Section 2 of the Voting Rights Act that a redistricting plan is racially discriminatory or has a dilutive effect, a plaintiff must initially satisfy three elements. "First, the minority group must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district." *Gingles*, 478 U.S. at 50. "Second, the minority group must be able to show that it is politically cohesive." *Id.* at 51. "Third, the minority must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it—in the absence of special circumstances, such as the minority candidate running unopposed . . . usually to defeat the minority's preferred candidate." *Id.* If confirmed, I will follow all binding precedent in the Supreme Court and Eleventh Circuit, including *Thornburg v. Gingles*.

27. **Under what circumstances can federal judges add to the list of fundamental rights the Constitution protects?**

Response: Federal judges must adhere to all Supreme Court precedents regarding the recognition and scope of fundamental rights.

28. **Please explain the difference between the original intent of a law and its original public meaning.**

Response: If I am fortunate to be confirmed, I will apply the process of constitutional and statutory interpretation based on Supreme Court and Eleventh Circuit precedent. The Supreme Court has primarily evaluated the original public meaning of a constitutional provision at issue. *See e.g.*, *United States v. Jones*, 132 S. Ct. 945, 949, 953 (2012); *District of Columbia v. Heller*, 554 U.S. 570, 576–600 (2008). There are, however, instances in which the Court also has considered the Framers' original intent. *See Crawford v. Washington*, 541 U.S. 36, 53-61 (2004).

a. **If there is a conflict between a law's original intent and original public meaning, which should a judge rely on to determine how to interpret and apply the law?**

Response: Please see my response to Question 28.

29. **As a judge, what legal framework would you use to evaluate a claim about a violation of the Establishment Clause?**

Response: In addition to *Town of Greece*, I would look to the Supreme Court's guidance in cases like *Board of Ed. of Kiryas Joel Village Sch. Dist. v. Grumet*, 512 U.S. 687 (1994) ("[W]e have frequently relied explicitly on the general availability of any benefit provided religious groups or individuals in turning aside Establishment Clause challenges."); and *Rosenberger v. Rector and Visitors of the Univ. of Virginia*, 515 U.S. 819, 839 (1995) ("More than once have we rejected the position that the Establishment Clause even justifies, much less requires, a refusal to extend free speech rights to religious speakers who participate in broad-reaching government programs neutral in design.").

30. **Do felon dispossession statutes violate the Second Amendment? If not, can states prohibit non-violent felons from possessing a firearm?**

Response: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court held that the Second Amendment protects an individual's right to keep and bear arms in defense of self and home. In *McDonald v. City of Chicago, Illinois*, 561 U.S. 742 (2010), it held that the right is fundamental. In *Heller*, the Court did acknowledge that, "[l]ike most rights, the right secured by the Second Amendment is not unlimited." 554 U.S. at 626. Thus, the Court emphasized that its decision in *Heller* "should [not] be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the

mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms." *Id.* at 626-627.

31. **Have you ever done any work, legal or non-legal, with or for a gun control group? If so, please identify the group and describe the nature of your work.**

    Response: No.

32. **Please describe your understanding of the constitutionality of nationwide or universal injunctions based on current Supreme Court and Eleventh Circuit precedent.**

    Response: Federal Rule of Civil Procedure 65 governs the procedures for issuance of an injunction. The relief granted by an injunction should "be no more burdensome to the defendant than necessary to provide complete relief to the [plaintiff]." *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979).

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

    Response: In *Meyer v. Nebraska*, 262 U.S. 390 (1923) and *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), the Supreme Court affirmed the right to direct the education and upbringing of one's children.

34. **In a False Claims Act case, what is the standard used by the Eleventh Circuit for determining whether a false claim is material?**

    Response: I do not have any particular experience with this statute. If I am fortunate to be confirmed I will carefully study the relevant legal provisions, legal precedent, and the facts in the record when analyzing claims brought under this Act.

35. **When you are considering a case, do you have a process for ensuring that you correctly understand how the law should apply, without letting personal preferences shape your view? If so, what is your process or approach?**

    Response: As a judicial nominee, I will follow all Supreme Court and Eleventh Circuit precedent. I will carry out my duties with fairness and impartiality.

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

    a. **Was *Brown v. Board of Education* correctly decided?**
    b. **Was *Loving v. Virginia* correctly decided?**
    c. **Was *Griswold v. Connecticut* correctly decided?**
    d. **Was *Roe v. Wade* correctly decided?**
    e. **Was *Planned Parenthood v. Casey* correctly decided?**
    f. **Was *Gonzales v. Carhart* correctly decided?**

g. **Was *District of Columbia v. Heller* correctly decided?**
h. **Was *McDonald v. City of Chicago* correctly decided?**
i. **Was *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* correctly decided?**

Response: Canons 2A and 3A of the Code of Conduct for United States Judges state that it is inappropriate for a judicial nominee to opine on the propriety of an opinion. I believe *Brown v. Board of Education* and *Loving v. Virginia*, however, are exceptions to this general rule. The Supreme Court's decisions in *Brown* and *Loving* are unlikely to be revisited or overruled. As for the other cases, there is litigation around the country involving legal debates about the correctness of the Court's decisions, including cases currently pending before the Supreme Court. If I am confirmed, I will follow all binding Supreme Court and Eleventh Circuit precedent.

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

Response: On or around July 6, 2021, I was contacted by an official from the White House Counsel's Office to set up an interview with attorneys from that office, which took place the next day. On or around July 21, 2021, I met separately with Sen. Warnock and Sen. Ossoff. Since July 26, 2021, I have been in contact with officials from the Office of Legal Policy at the Department of Justice.

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

Response: No.

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

Response: No.

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

Response: No.

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

    Response: No.

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

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

       Response: No.

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

       Response: Katie O'Connor is a former colleague of mine from the ACLU's national Voting Rights Project. Beyond that, I have not spoken with anyone associated with Demand Justice.

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

       Response: Please see my answer to Question 42b.

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

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

       Response: No.

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

       Response: No.

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

       Response: No.

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

    a. **Has anyone associated with Arabella Advisors requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, the Hopewell Fund, the Windward Fund, or any other such Arabella dark-money fund.**

    Response: No.

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

    Response: No.

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

    Response: No.

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

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

    Response: No.

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

    Response: No.

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

    Response: In my capacity as an attorney with the SPLC and with the ACLU, I have met with representatives of the Open Society Foundation to discuss the work of those organizations.

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

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

    Response: No.

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

    Response: No.

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

    Response: No.

47. **Do the answers you have provided to these questions reflect your true and personal views?**

    Response: My responses to these questions reflect my understanding of and adherence to Supreme Court and Eleventh Circuit's precedents, my compliance with the Code of Conduct for judges, and my general understanding of contemporary terms of art.

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

    Response: In answering these questions, I relied on my professional knowledge and legal research that I conducted myself. I received the questions on May 4, 2022. I prepared the responses and received feedback from the Office of Legal Policy. On May 13, 2022, I finalized and authorized the submission of these responses to the Senate.

Senator Marsha Blackburn
Questions for the Record to Nancy G. Abudu
Nominee for the Eleventh Circuit

1. **While working for the ACLU of Florida, you filed a lawsuit opposing a Miami ordinance that banned sex offenders from living a little less than a half mile from a school. You said that this ordinance was "unduly harsh" and, in a separate statement, also said that it is "most unfortunate" that child abuse crimes "follow them for the rest of their lives." Your priorities strike me as backwards here—why is it unfortunate that our laws prioritize the safety of school children over the convenience of child predators?**

   Response**:** Criminal offenses against children are among the most horrifying acts that can be committed. My work in *Doe v. Miami-Dade County*, 846 F.3d 1180 (11th Cir. 2017) was in my capacity as the legal director of the ACLU of Florida. The organization filed that lawsuit to enhance public safety given the unstable and transitory nature of housing for such individuals. Restrictions on where individuals convicted of such crimes can live can have the perverse effect of reducing public safety because these laws increase the likelihood that such individuals will be unable to find housing. In addition, homelessness makes such individuals even harder for law enforcement to monitor.

2. **Do you believe that penalties for child sexual abuse are too harsh?**

   Response: I have never stated that. If confirmed as a judge in the Eleventh Circuit, I would respect the fact that federal district court judges have primary responsibility for sentencing criminal defendants according to the factors Congress set forth in 18 U.S.C. § 3553(a). The standard of review of a sentencing decision on appeal is typically the very deferential abuse of discretion standard.

3. **In a 2020 SPLC article, you wrote that "our current criminal justice system is one of the most inhumane examples of how racial discrimination operates and can ruin people's lives forever." You also stated that because of laws prohibiting former felons from voting, our system is "practically the same system as during slavery." I am shocked that you would compare laws that reasonably prohibit rapists and murderers from voting in our elections as a consequence of their crimes to a system of race-based slavery. Can you please explain why you believe that prohibiting a child rapist from having a say in our elections is the equivalent of slavery?**

   Response: Much of my career has been spent as an advocate for the voting rights, civil rights, and civil liberties of individuals who could not afford to pay for legal representation. That advocacy has occurred in the form of blog posts, press releases, interviews, and other forms of public education. That said, I well understand the difference between the role of an advocate and that of a judge. Our system of laws functions when judges set aside their prior advocacy on behalf of any particular client, as well as any personal views they might have, and rule solely based on the law and the

facts of the case before them. I commit wholeheartedly to doing so pursuant to the judicial oath set forth in 28 U.S.C. § 453.

To the extent that statement is an accurate quote, it was said in my capacity as the deputy legal director for voting rights at the SPLC. As an advocate, I have spoken on behalf of individuals wrongfully convicted of crimes; individuals who were sentenced at a disproportionate rate as compared to those convicted of similar, low-level offenses; and non-violent, first-time offenders. The context in which any such statement might have been made would have been to highlight the fact that many people convicted of crimes completed their sentences decades ago, do not recidivate, are gainfully employed, and/or are raising families. The organizations for which I have worked have sought the reinstatement of voting rights on behalf of these types of individuals. To your specific question, I have never advocated for an individual convicted of assaulting a child to have their voting rights restored.

4. **You signed a letter in 2017 that urged Miami-Dade County to become a sanctuary jurisdiction and to "remain one among hundreds of jurisdictions across the United States that have refused to spend taxpayer dollars on immigration enforcement that undermines community safety." How can we trust that you will uphold duly enacted immigration law as a federal judge when you have encouraged jurisdictions to refuse to comply with those very same immigration laws?**

Response: I signed that letter in my capacity as legal director of the ACLU of Florida. I well understand the difference between the role of an advocate and the role of a judge. As a judicial nominee, I commit to upholding the enforcement of immigration laws.

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

Questions for the Record for Nancy Abudu, Nominee for the Eleventh Circuit

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. **Is racial discrimination wrong?**

   Response: Yes. Many federal laws prohibit discrimination on the basis of race. In addition, any laws that involve a suspect classification such as race are subject to strict scrutiny under binding Supreme Court precedent.

2. **What definition would you provide for the word "woman"?**

Response: The Merriam-Webster dictionary has defined a woman as "an adult female person." However, there are cases currently in the lower courts addressing contemporary definitions of the word "woman." Therefore, as a judicial nominee, it would be inappropriate for me to comment further given that these cases are pending, and that issue may very well come before the Eleventh Circuit or Supreme Court.

3. **In March of 2019, SPLC's founder Morris Dees was fired for sexual harassment and discrimination, and several employees alleged a cover-up by the SPLC of Dees' actions. Did this give you any pause whatsoever about joining the organization?**

Response: I joined the SPLC in February 2019, about a month before Mr. Dees was terminated. I joined the organization which has existed since 1971, to help advance its mission of providing pro bono legal assistance to communities in the southern United States who, without such representation, would not be able to vindicate their legal rights.

4. **You stated during the confirmation hearing that you are not familiar with the SPLC's role in designating hate groups. Please identify all litigation matters, including case names and numbers, on which you have worked at the SPLC relating to "special litigation related to hate groups."**

Response: Since the early 1980s, the SPLC has sued organizations like the Ku Klux Klan, white nationalists, and anti-government groups for their physical and online attacks on people of color and those primarily of the Jewish faith. As the SPLC's Director of Strategic Litigation, my responsibility is to oversee and provide general management over the organization's docket. However, it is the deputy legal directors of the practice areas and litigation teams that work directly on litigation matters. Therefore, I am not on the papers, on the litigation team, or otherwise handling the day-to-day management of cases involving anti-government and/or hate groups.

5. **You were quoted in a 2020 article in which the SPLC referred to the Family Research Council as a hate group.[1] Were you aware at the time that you participated in that article that the SPLC has designated conservative groups as hate groups?**

Response: At the time that article was published, I was the deputy legal director for voting rights at SPLC. My comments were confined to that work. I do not work in the branch of the organization that is solely responsible for designating certain organizations as anti-government and/or hate groups.

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[1] *See* So. Poverty L. Ctr., *Georgia Secretary of State, Hate Group Leader Discuss Voter Fraud Probe*, Oct. 1, 2020 (Abudu SJQ Attachments at 2990).

6. **You stated in responses to the Senate Judiciary Questionnaire that in your role as the Director for Strategic Litigation at the SPLC, that you "have taken on significant managerial responsibilities, including overseeing all of the organization's legal programmatic work, which, in addition to voting rights, includes immigrants' rights, criminal justice reform, children's rights, LGBTQ rights, and special litigation related to hate groups." Please describe in detail the nature of your work on "special litigation related to hate groups."**

Response: Please see my response to Question 4.

7. **In a July 2, 2021 panel, you stated in response to a question about how to combat "dog whistles" about critical race theory that, "I just have to highlight SPLC's – both our intelligence project that really talks about the issues of hate groups and white supremacists and the information and most disinformation that they're putting out there, as well as our Learning for Justice Program, which is the counter to that kind of behavior."[2] You highlighted in that talk that SPLC is actively addressing hate groups, a topic which you said you were not familiar with during the hearing. In light of this statement, was your testimony at the April 27, 2022 hearing untruthful?**

Response: My testimony during the hearing was that I play no role in the SPLC's designation of individuals and organizations as anti-government and/or hate groups. I am aware of the fact that the SPLC has a branch that is dedicated to that work and that is what I was referencing during that panel.

8. **The Washington Post referred to the SPLC as a "fundraising behemoth." It has an endowment of half a billion dollars—much of it in offshore accounts— and its contributions approach $150 million a year. The SPLC's annual staff salary is approximately $30 million. Predictably SPLC list of purported "hate groups" continues to expand, now totaling over a thousand such groups. Isn't it true that the SPLC has an obvious financial interest in labeling more and more group "hate groups" in order to fundraise greater and greater amounts of money?**

Response: I am unaware of this quote. As an SPLC attorney who provides pro bono legal assistance to individuals and community groups, I can only speak to the way the SPLC has used its resources to support the specific work that I do on behalf of the organization.

9. **Is a group that advocates for a traditional view of marriage—that marriage is between one man and one woman—anti-LGBT? Would such a group meet SPLC's definition of being a hate group? What if this group advocates against homosexuality on the basis that their faith dictates that such behavior is sinful?**

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[2] *See Vouchers, Voter Suppression, and Other Vices: The Effort to Undermine Democracy and the Public Good*, https://www.youtube.com/watch?v=6_JSuO40uag (remarks beginning at around 30:00).

Response: Please see my response to Question 5.

10. **If confirmed, you would sit in Georgia. Did voter suppression affect the outcome of the 2018 Georgia Gubernatorial race? Who won that race?**

Response: At the time of the 2018 Georgia gubernatorial race, I was the legal director of the ACLU of Florida and, therefore, was not involved in any issues surrounding the outcome of that election. The Georgia Secretary of State certified Brian Kemp as the winner of that race.

11. **You have been an active participant in the National Lawyers Guild, Georgia Chapter, as a member from 2006 to present, and as chapter president from 2011 to 2012. The NLG describes its mission as: "To use law for the people, uniting lawyers, law students, legal workers, and jailhouse lawyers to function as an effective force in the service of the people by valuing human rights and ecosystems over property interests."[3] According to the group, "The NLG is dedicated to the need for basic change in the structure of our political and economic system. The NLG is anti-capitalist, anti-imperialist, and anti-racist and we strive to bring in anti-oppressive practices to all aspects of our organization."**

The NLG's primary focuses are: abolishing prisons, ending drug prohibitions, and promoting labor interests and "promoting the rights of ecosystems." Specifically, NLG describes its abolition goals as follows:

> **The NLG is committed to the dismantling and abolition of all aspects of systems and institutions that support, condone, create, fill, or protect prisons, including jails, police lock ups, juvenile detention facilities, immigration detention centers, involuntary psychiatric treatment centers, and other institutional settings in which people are held against their will. We are committed to supporting grassroots organizing efforts, policy initiatives, and litigation that promotes or moves toward abolition, including: the rights and organizing of prisoners, the de-funding and closure of prisons and redirection of prison and policing budgets into social and human services as well as re-entry support; legalization of drug use and sex work; release of prisoners serving life without parole and other inhumane sentences, decreased use of solitary confinement, and efforts to prevent construction of new prisons.**

a. **As a current member of the NLG and former chapter president, are you "committed to the dismantling and abolition of all aspects of systems and institutions that support, condone, create, fill, or protect prisons, including jails,**

[3] "Our Work," Nat'l Lawyers Guild, available at https://www.nlg.org/our-work/.

police lock ups, juvenile detention facilities, immigration detention centers, involuntary psychiatric treatment centers, and other institutional settings"?

Response: No. I also want to make clear that I have never played a role in developing, adopting, or promoting these positions. I joined the Georgia chapter of the National Lawyers Guild because I was aware of its work supporting the First Amendment rights of individuals. I did serve as the chapter president more than ten years ago. I would not describe myself as an "active participant" for the last several years.

b. **As a current member of the NLG and former chapter president, are you "committed" to policy initiatives and litigation "that promotes or moves toward abolition, including: the rights and organizing of prisoners, the defunding and closure of prisons and redirection of prison and policing budgets"?**

Response: No. I also want to make clear that I have never played a role in developing, adopting, or promoting these positions. As stated in my response to Question 11(a), I joined the Georgia chapter of the Guild because of its work supporting the First Amendment rights of individuals. My service as the chapter president was over ten years ago. I would not describe myself as an "active participant" for the last several years.

c. **As a current member of the NLG and former chapter president, are you "committed" to policy initiatives and litigation to legalize drug use and sex work?**

Response: I have never taken a position regarding these issues in my capacity as a member of the Georgia chapter of the Guild or when I was the chapter president over ten years ago. I also played no role in the organization's development, adoption, or promotion of these positions. As stated in my response to Question 11(a), I joined the Georgia chapter of the Guild because of its work supporting the First Amendment rights of individuals. My service as the chapter president was over ten years ago. I would not describe myself as an "active participant" for the last several years.

12. **In 2020, the NLG Georgia Chapter—where you are a member and the former president—reposted Mariame Kaba's NYT op-ed, "Yes, We Mean Literally Abolish the Police," on its social media pages. Did you agree with the NLG Georgia Chapter when it promoted this article that argues that "defund the police" means "literally abolish the police"?**

Response: No. I also want to make clear that I have never played a role in developing, adopting, or promoting these positions and I have not played any role in the content that has appeared on the Georgia Chapter's social media pages in the last ten years. Additionally, I would note that I have represented law enforcement and have worked

collaboratively with law enforcement departments. I am also deeply proud to have the support of the National Organization of Black Law Enforcement Executives.

13. **If confirmed, will you remain a member of the NLG Georgia Chapter?**

Response: No.

14. **To your knowledge, is Critical Race Theory currently taught in kindergarten to 12th grade educational settings? If not, should it be?**

Response: I am not aware of whether and/or where "critical race theory" might be taught in schools throughout the entire country.

15. **In July 2021, you participated in a webinar discussion hosted by Public Funds Public Schools to explore the connections between private school vouchers, other privatization of public goods, and broad efforts to undermine American democratic institutions. During this webinar about elementary to high school public school institutions, you said the following about critical race theory:**

> **So I think that you initial comment, Don, that we're using this term 'critical race theory' but most people don't even understand what it means and also that that phrase in and of itself doesn't fully encapsulate the education that's necessary in order for people, especially our younger generations, to understand why our social, economic, cultural conditions are what they are today. So I think that number one, we need to think carefully about what is the language we want to adopt and how do we control the narrative and the message. Because this is what is happening: we put stuff out there, we have some gains, and then they completely mischaracterize what we're trying to achieve, which helps to push their agenda forward in terms of discounting and discrediting our work . . . Of course the school, the classroom is the ideal place for that kind of education to happen, and I don't think we should give up on making sure that it does, but I think this is where technology and other tools of education that younger folks are already on top of probably better than we are. So I think we need to take advantage of those options as well.[4]**

a. **Do you personally believe that it is necessary for people, especially younger generations, to understand critical race theory (however you define the term)?**

Response: To be clear, I have never advocated for any specific curriculum to be taught in any educational institution – critical race theory or otherwise. As a judicial

[4] *See Vouchers, Voter Suppression, and Other Vices: The Effort to Undermine Democracy and the Public Good*, https://www.youtube.com/watch?v=6_JSuO40uag (remarks beginning at around 31:00).

nominee, I defer to parents, educators, school administrators, and other policymakers to determine the best form of education for children in their school districts.

b. **Do you personally believe that members of the Senate Judiciary Committee or state governments in the Eleventh Circuit have "completely mischaracterize[d] what [you're] trying to achieve" with regard to critical race theory?**

Response: As a judicial nominee, I recognize that issues related to school curriculum involve policy matters that should be addressed by parents, educators, administrators, and elected officials to determine what is in the best interest of children in their school systems.

c. **Do you believe that the public school classroom "is the ideal place for that kind of education" about race and critical race theory "to happen"?**

Response: Please see my answer to Question 15(a).

16. **How would you characterize your judicial philosophy? Identify which U.S. Supreme Court Justice's philosophy out of the Warren, Burger, Rehnquist, and Roberts Courts is most analogous with yours.**

Response: I believe the principle of equal justice under law serves as the foundation for how judges should approach the role and responsibilities of being a judge. If I am confirmed, I would treat all litigants fairly and provide them with a meaningful opportunity to be heard. I would remain impartial and unbiased in my application of the governing law to the facts of any case before me. As a neutral arbiter, I would approach all cases with an open mind, encourage thoughtful dialogue with my judicial colleagues, and provide clear and well-reasoned decisions.

I have not carefully studied the judicial philosophy of each Supreme Court Justice since the Warren Court and, therefore, cannot single out any Justice's philosophy as the one I most admire.

17. **Please briefly describe the interpretative method known as originalism. Would you characterize yourself as an 'originalist'?**

Response: If I am fortunate to be confirmed, I will apply the process of constitutional and statutory interpretation based on Supreme Court and Eleventh Circuit precedent. The Supreme Court has primarily evaluated the original public meaning of a constitutional provision at issue. *See e.g.*, *United States v. Jones*, 565 U.S. 400, 404-05, 411 (2012); *District of Columbia v. Heller*, 554 U.S. 570, 576-600 (2008). The Court also has considered the Framer's original intent. *See Crawford v. Washington*, 541 U.S. 36, 53-61 (2004).

18. **Please briefly describe the interpretive method often referred to as living constitutionalism. Would you characterize yourself as a 'living constitutionalist'?**

Response: Please see my response to Question 17.

19. **If you were to be presented with a constitutional issue of first impression— that is, an issue whose resolution is not controlled by binding precedent—and the original public meaning of the Constitution were clear and resolved the issue, would you be bound by that meaning?**

Response: I would follow all Supreme Court and Eleventh Circuit precedent regarding the resolution of legal claims involving the meaning of a constitutional provision.

20. **Is the public's current understanding of the Constitution or of a statute ever relevant when determining the meaning of the Constitution or a statute? If so, when?**

Response: If confirmed, I will follow Supreme Court and Eleventh Circuit precedent regarding the interpretation of a constitutional provision or statute. In *District of Columbia v. Heller*, the Supreme Court stated that it was "guided by the principle that '[t]he Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning.'" 554 U.S. 570, 576 (2008) (citation omitted). In *Bostock v. Clayton Cty., Georgia*, the Supreme Court noted that it "normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment. After all, only the words on the page constitute the law adopted by Congress and approved by the President." 140 S. Ct. 1731, 1738 (2020).

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

Response: The meaning of the Constitution is fixed and does not change or evolve over time. Judges are expected to apply Supreme Court and circuit court precedent related to established constitutional principles to new circumstances.

22. **Are there identifiable limits to what government may impose—or may require—of private institutions, whether it be a religious organization like Little Sisters of the Poor or small businesses operated by observant owners?**

Response: The First Amendment and certain statutes, such as the Religious Freedom Restoration Act (RFRA), limit what the government may impose or require of private institutions. The restrictions in RFRA only apply to federal laws and those in the District of Columbia, Puerto Rico, and other territories or possessions of the United States. 42 U.S.C. § 2000bb-2. The Supreme Court has held that RFRA protects religious organizations, *see Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania*,

140 S. Ct. 2367 (2020), and small businesses operated by observant owners, *see Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014).

23. **Is it ever permissible for the government to discriminate against religious organizations or religious people?**

Response: The Supreme Court has "made clear that the government, if it is to respect the Constitution's guarantee of free exercise, cannot impose regulations that are hostile to the religious beliefs of affected citizens and cannot act in a manner that passes judgment upon or presupposes the illegitimacy of religious beliefs and practices." *Masterpiece Cakeshop, Ltd. v. Colorado C.R. Comm'n*, 138 S. Ct. 1719, 1731 (2018) (citation omitted). "Although a law targeting religious beliefs as such is never permissible, if the object of a law is to infringe upon or restrict practices because of their religious motivation, the law is not neutral, and it is invalid unless it is justified by a compelling interest and is narrowly tailored to advance that interest." *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 533 (1993).

24. **In *Roman Catholic Diocese of Brooklyn v. Cuomo*, the Roman Catholic Diocese of Brooklyn and two Orthodox Jewish synagogues sued to block enforcement of an executive order restricting capacity at worship services within certain zones, while certain secular businesses were permitted to remain open and subjected to different restrictions in those same zones. The religious organizations claimed that this order violated their First Amendment right to free exercise of religion. Explain the U.S. Supreme Court's holding on whether the religious entity-applicants were entitled to a preliminary injunction.**

Response: The Supreme Court, in *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63 (2020), determined that the religious entity-applicants met the requirements for a preliminary injunction against the government regulations being challenged. The Court found that the applicants were likely to prevail on the merits of their First Amendment claims and had made a strong showing that the challenged regulations were not neutral to religion and "single out houses of worship for especially harsh treatment." *Id.* at 66. Under a strict scrutiny analysis, the Court held the challenged regulations were not narrowly tailored to achieve the compelling interest of stemming the spread of COVID-19. *Id.* at 67. The Court further held that the applicants would be irreparably harmed without the injunction, as "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Id.* (citation omitted). Lastly, the Court found that there was no showing that granting the injunction would be harmful to the public. *Id.* at 68.

25. **Please explain the Supreme Court's holding and rationale in *Tandon v. Newsom*.**

Response: In *Tandon v. Newsom*, 141 S. Ct. 1294 (2021), the Supreme Court held that "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." *Id*. at 1296 (emphasis in original). It also determined that "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." *Id*. The Court reasoned that "[c]omparability is concerned with the risks various activities pose, not the reasons why people gather." *Id*. In addition, it ruled that to withstand strict scrutiny, the government must "show that measures less restrictive of the First Amendment activity could not address its interest in reducing the spread of COVID. Where the government permits other activities to proceed with precautions, it must show that the religious exercise at issue is more dangerous than those activities even when the same precautions are applied." *Id*. at 1296-97. Fourth, the Supreme Court stated that a case is not necessarily moot when the government withdraws or modifies a COVID restriction during litigation. *Id*. at 1297. "So long as a case is not moot, 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." *Id*. (citation omitted). In applying these legal principles, the Court concluded that the applicants were entitled to a preliminary injunction of the State's COVID restrictions that treat some comparable secular activities more favorably than at-home religious exercise. *Id*. It reasoned that the lower court did not conclude that the comparable secular activities pose a lesser risk of COVID transmission than the applicants' proposed religious exercise at home. *Id*. It stated, "The State cannot 'assume the worst when people go to worship but assume the best when people go to work.'" *Id*. (citation omitted). The Court further concluded that a change in the State's policy, which still allowed the challenged prohibitions to remain in effect for a period of time and left the door open for reinstatement of the restrictions, did not render the case moot. *Id*.

26. **Do Americans have the right to their religious beliefs outside the walls of their houses of worship and homes?**

Response: Yes.

27. **Explain your understanding of the U.S. Supreme Court's holding in *Masterpiece Cakeshop v. Colorado Civil Rights Commission*.**

Response: In *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, the Supreme Court held that the government's application of a facially neutral public accommodations law violated the Free Exercise Clause where the transcript from commission meetings showed a religious animus against the sincerely held religious beliefs of the cakeshop owner. 138 S. Ct. 1719, 1729-32 (2018).

28. **Under existing doctrine, are an individual's religious beliefs protected if they are contrary to the teaching of the faith tradition to which they belong?**

Response: An individual's religious beliefs are protected if they are sincerely held. A sincere religious belief need not be consistent with any particular faith tradition. *See, e.g.*, *Frazee v. Illinois Dep't of Emp. Sec.*, 489 U.S. 829, 834 ("[W]e reject the notion that to claim the protection of the Free Exercise Clause, one must be responding to the commands of a particular religious organization."). Courts do not determine whether religious beliefs are mistaken or insubstantial; they simply determine whether they are honest convictions. *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 725 (2014).

a. **Are there unlimited interpretations of religious and/or church doctrine that can be legally recognized by courts?**

Response: The Supreme Court has cautioned that "courts must not presume to determine the place of a particular belief in a religion or the plausibility of a religious claim." *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872, 887 (1990). If I were confirmed to the Eleventh Circuit and a case came before me that presented this issue, I would carefully research and follow applicable Supreme Court and Eleventh Circuit precedent.

b. **Can courts decide that anything could constitute an acceptable "view" or "interpretation" of religious and/or church doctrine?**

Response: Please see my response to Question 28(a).

c. **Is it the official position of the Catholic Church that abortion is acceptable and morally righteous?**

Response: My general understanding is that the Catholic Church opposes abortion, but I am not deeply familiar with the Church's position.

29. **In *Our Lady of Guadalupe School v. Morrissey-Berru*, the U.S. Supreme Court reversed the Ninth Circuit and held that the First Amendment's Religion Clauses foreclose the adjudication of employment-discrimination claims for the Catholic school teachers in the case. Explain your understanding of the Court's holding and reasoning in the case.**

Response: Under the "ministerial exception," "courts are bound to stay out of employment disputes involving those holding certain important positions with churches and other religious institutions." *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049, 2060 (2020). In *Our Lady of Guadalupe School*, the Supreme Court ruled that the school's employment decisions were subject to the ministerial exception. *Id.* at 2066. Upon considering the First Amendment origins of the ministerial exception and the role and importance of religious education to many faiths, *id*. at 2060-66, the Court's decision was based on "abundant record evidence that [the teachers] performed vital religious duties" including providing instruction in religion. *Id*. at 2066. The Supreme

Court reasoned that the teachers' "titles did not include the term 'minister,' and they had less formal religious training, but their core responsibilities as teachers of religion were essentially the same." *Id*.

30. **In *Fulton v. City of Philadelphia*, the U.S. Supreme Court was asked to decide whether Philadelphia's refusal to contract with Catholic Social Services to provide foster care, unless it agrees to certify same-sex couples as foster parents, violates the Free Exercise Clause of the First Amendment. Explain the Court's holding in the case.**

Response: In *Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2021), the Supreme Court ruled that a restriction on religious entities that allows for individual exemptions was not generally applicable and, therefore, subject to strict scrutiny.

31. **Explain your understanding of Justice Gorsuch's concurrence in the Supreme Court's decision to grant certiorari and vacate the lower court's decision in *Mast v. Fillmore County*.**

Response: In Justice Gorsuch's concurrence in *Mast v. Fillmore County*, 141 S. Ct. 2430 (2021), he raised some issues that the lower courts and administrative authorities might consider on remand given the decision in *Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2021). He stated that *Fulton* makes clear that the Religious Land Use and Institutionalized Persons Act requires strict scrutiny—that is, the government must show that its land use regulation is narrowly tailored to serve a compelling governmental interest. *Mast*, 141 S. Ct. at 2432. Justice Gorsuch also reasoned that courts "cannot rely on broadly formulated governmental interests but must scrutinize the asserted harm of granting specific exemptions to particular religious claimants." *Id*. (internal quotation marks, alterations, and citations omitted). He also stated that governments and courts must give due weight to exemptions given to other groups and to regulations used in other jurisdictions. *Id*. at 2432-33. Finally, he concluded that the government cannot reject alternatives based on assumptions or supposition. *Id*. at 2433.

32. **Explain your understanding of the Supreme Court's holdings in *Shelby County v. Holder* and *Brnovich v. Democratic National Committee*.**

Response: In *Shelby County, AL v. Holder*, 570 U.S. 529 (2013), the Supreme Court held that the preclearance coverage formula contained in Section 4(b) of the Voting Rights Act of 1965 was unconstitutional given the record before Congress. In *Brnovich v. Democratic National Committee*, 141 S. Ct. 2321 (2021), the Court upheld Arizona's policy of rejecting out-of-precinct ballots; ruled that the challenged statute did not violate Section 2 of the Voting Rights; and found that the Arizona law was not enacted with a racially discriminatory purpose.

33. **As a general matter, are criminal and civil laws in the United States punishing sex offenders for their offenses too harsh?**

Response: I have never stated that. If confirmed as a judge in the Eleventh Circuit, I would respect the fact that federal district court judges have primary responsibility for sentencing criminal defendants according to the factors Congress set forth in 18 U.S.C. § 3553(a). The standard of review of a sentencing decision on appeal is typically the very deferential abuse of discretion standard.

34. **Are laws that ban sex offenders from living within a limited radius around schools too harsh?**

Response**:** Criminal offenses against children are among the most horrifying acts that can be committed. My work in *Doe v. Miami-Dade County*, 846 F.3d 1180 (11th Cir. 2017) was in my capacity as the legal director of the ACLU of Florida. The organization filed that lawsuit to enhance public safety given the unstable and transitory nature of housing for such individuals. Restrictions on where individuals convicted of such crimes can live can have the perverse effect of reducing public safety because these laws increase the likelihood that such individuals will be unable to find housing. In addition, homelessness makes such individuals even harder for law enforcement to monitor.

35. **Do you stand by your 2018 statement that these kind of residency restrictions for sex offenders "are ineffective and unduly harsh" and the "latest attempt" by elected officials "at legislating people into endless cycles of homelessness and poverty"?[5]**

Response: Please see my response to Question 34.

36. **You made the following statements last year in a July 16, 2021 letter to members of the U.S. Senate:**

> **The single most devastating moment for voters in the last decade was the misguided 2013 Supreme Court decision in *Shelby County, Ala. v. Holder*, which demolished the heart of the Voting Rights Act of 1965. The decision rendered Section 5 unenforceable, releasing states and localities with histories of racial discrimination in voting from the requirement to receive federal approval before making any new voting changes . . . . This past term, the Supreme Court dealt another devastating blow to voters. In *Brnovich v. Democratic National Committee*, the Supreme Court severely weakened Section 2 of the Voting Rights Act, a key provision upon which the SPLC and other legal advocates relied to challenge laws and practices that operate to deny the right to vote to Black and other historically disenfranchised voters after *Shelby County* rendered Section 5 inoperable. *Brnovich* strips Section 2**

[5] *Advocates File Response in Lawsuit Challenging Miami-Dade County's Unconstitutional Residency Residence Restrictions*, ACLU of Florida, Aug. 30, 2018 (Abudu SJQ Attachments at 3242)

of the broad categories of protections Congress installed in its 1982 amendments to the Voting Rights Act to account for the increasingly prevalent facially-neutral laws that disproportionately suppress voting access for people of color— including the types of laws at issue in the *Brnovich* case itself. With two watershed opinions in less than a decade, the Supreme Court moves dangerously close to shutting the door on legal recourse for voter suppression and discrimination. Congress must act urgently to protect voting rights and course-correct the Supreme Court from this destructive path.

a. **Do you personally believe that *Shelby County v. Holder* demolished the heart of the Voting Rights Act?**

Response: Much of my career has been spent as an advocate for the voting rights, civil rights, and civil liberties of individuals who could not afford to pay for legal representation. That advocacy has occurred in the form of blog posts, press releases, interviews, and other forms of public education. That said, I well understand the difference between the role of an advocate and that of a judge. Our system of laws functions when judges set aside their prior advocacy on behalf of any particular client, as well as any personal views they might have, and rule solely based on the law and the facts of the case before them. I commit wholeheartedly to doing so pursuant to the judicial oath set forth in 28 U.S.C. § 453.

As a judicial nominee, my commitment is to follow the Supreme Court and Eleventh Circuit's precedent with respect to claims regarding alleged infringements on the right to vote, including *Shelby County*.

b. **Do you personally believe that the Supreme Court dealt "another devastating blow to voters" in *Brnovich v. Democratic National Committee*?**

Response: As a judicial nominee, my commitment is to follow the Supreme Court and Eleventh Circuit's precedent with respect to claims regarding alleged infringements on the right to vote, including *Brnovich*.

c. **Do you personally believe that the Supreme Court is on a "destructive path" and that the Supreme Court has moved "dangerously close to shutting the door on legal recourse for voter suppression and discrimination"?**

Response: As a judicial nominee, my commitment is to follow the Supreme Court and Eleventh Circuit's precedent with respect to claims regarding alleged infringements on the right to vote.

37. **You contributed to an SPLC report in August 2021 that claimed that an Alabama law that requires photo identification to vote is "burdensome" and "do[es] not serve any legitimate state interest." The report attacks Alabama, contending that the**

state's government officials "champion[] voter suppression."[6] The report adds that the "lived experiences Alabamians share[d]" present "clear and compelling evidence of how Alabama and its localities have continued their unyielding tradition of systematically disenfranchising Black citizens." In 2020, you criticized Alabama Governor Kay Ivey, accusing the governor of "show[ing] a total lack of leadership on a critical issue" and using "the myth of voter fraud as an excuse to prevent Alabamians from having a safe way to vote by mail in future elections." You also suggested that Governor Ivey's concern about voter fraud "will undermine our democratic process."[7] Do you personally believe that state voter ID laws are burdensome and do not serve any legitimate state interest?

Response: Much of my career has been spent as an advocate for the voting rights, civil rights, and civil liberties of individuals who could not afford to pay for legal representation. That advocacy has occurred in the form of blog posts, press releases, interviews, and other forms of public education. That said, I well understand the difference between the role of an advocate and that of a judge. Our system of laws functions when judges set aside their prior advocacy on behalf of any particular client, as well as any personal views they might have, and rule solely based on the law and the facts of the case before them. I commit wholeheartedly to doing so pursuant to the judicial oath set forth in 28 U.S.C. § 453.

In *Crawford v. Marion County*, 553 U.S. 181 (2008), the Supreme Court held that voter photo identification laws are per se constitutional. If confirmed, I will following all binding precedent in the Supreme Court and Eleventh Circuit, including *Crawford*.

38. **Do you personally believe that Alabama "and its localities have continued their unyielding tradition of systematically disenfranchising Black citizens"?**

Response: Please see my response to Question 36(c).

39. **Do you personally believe that Alabama and its executive leadership have invented a "myth of voter fraud" in order to limit voting opportunities?**

Response: Please see my response to Question 36(c).

40. **Do you personally believe that concerns about the security of state election administration undermines the democratic process?**

Response: Please see my response to Question 36(c).

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[6] So. Poverty L. Ctr., *Selma, Shelby County & Beyond*, Aug. 16, 2021.

[7] So. Poverty L. Ctr., *SPLC: Governor Ivey's Statements on Absentee Balloting 'Irresponsible,' Showing 'Total Lack of Leadership on a Critical Issue,'* Mar. 25, 2020 (Abudu SJQ Attachments at 3091).

41. **How can you impartially consider laws promulgated by the State of Alabama, in particularly any of its election administration laws, when you have attacked the state as upholding a tradition of systematically targeting its own population, "systematically disenfranchising" its citizens, and undermining the democratic process?**

Response: Much of my career has been spent as an advocate for the voting rights, civil rights, and civil liberties of individuals who could not afford to pay for legal representation. That advocacy has occurred in the form of blog posts, press releases, interviews, and other forms of public education. That said, I well understand the difference between the role of an advocate and that of a judge. Our system of laws functions when judges set aside their prior advocacy on behalf of any particular client, as well as any personal views they might have, and rule solely based on the law and the facts of the case before them. I commit wholeheartedly to doing so pursuant to the judicial oath set forth in 28 U.S.C. § 453.

If confirmed, and a case before me involved the State of Alabama, I would adjudicate the matter fairly and impartially. I will recuse myself from any case in which I am listed as counsel and any case in which I played a role in the approval and/or filing of the litigation. I believe it is important for federal judges to follow the highest ethical standards and I commit to rigorously adhering to 28 U.S.C. § 455 and the Code of Conduct for United States Judges regarding recusal if I am confirmed.

42. **In April 2021, you said that "Georgia continues to be a bad actor. This state as an institution simply cannot be trusted to protect the rights of voters."[8] In February 2021, you suggested that "Georgia's Republican state senators" introduced an election law because the senators sought "not to be outdone by their counterparts in punishing voters and undermining democracy."[9] Do you personally believe that Georgia, as a state, is a "bad actor"?**

Response: Please see my response to Question 36(c).

43. **Do you personally believe that Georgia, as a state, "simply cannot be trusted to protect the rights of voters"?**

Response: Please see my response to Question 36(c).

44. **Do you personally believe that Georgia's elected officials did not want to be "outdone by their counterparts in punishing voters in undermining democracy" last year in 2021?**

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[8] Raisa Habersham, *An Ongoing Fight; In Georgia, Voter Suppression Has Often Been Tied to the Black Vote*, The Augusta Chronicle, Apr. 12, 2021 (Abudu SJQ Attachments at 2818).
[9] *Id*. at 2897.

Response: Please see my response to Question 36(c).

45. **How can you impartially consider laws promulgated by the State of Georgia, in particularly any of its election administration laws, when you have attacked the state as a "bad actor," untrustworthy, and competing to undermine democracy?**

Response: Much of my career has been spent as an advocate for the voting rights, civil rights, and civil liberties of individuals who could not afford to pay for legal representation. That advocacy has occurred in the form of blog posts, press releases, interviews, and other forms of public education. That said, I well understand the difference between the role of an advocate and that of a judge. Our system of laws functions when judges set aside their prior advocacy on behalf of any particular client, as well as any personal views they might have, and rule solely based on the law and the facts of the case before them. I commit wholeheartedly to doing so pursuant to the judicial oath set forth in 28 U.S.C. § 453.

If confirmed, and a case before me involved the State of Georgia, I would adjudicate the matter fairly and impartially. I will recuse myself from any case in which I am listed as counsel and any case in which I played a role in the approval and/or filing of the litigation. I believe it is important for federal judges to follow the highest ethical standards and I commit to rigorously adhering to 28 U.S.C. § 455 and the Code of Conduct for United States Judges regarding recusal if I am confirmed.

46. **In 2020, you wrote that Florida has engaged in a "war to strip poor and lowincome people of all political power."[10] In 2020, you wrote that "Governor DeSantis is digging in his heels to ensure poor people in his state are blocked from voting."[11] Do you personally believe that Florida is engaged in a "war to strip poor and low-income people of all political power"?**

Response: Please see my response to Question 36(c).

47. **Do you personally believe that "Governor DeSantis is digging in his heels to ensure poor people in his state are blocked from voting"?**

Response: Please see my response to Question 36(c).

48. **How can you impartially consider laws promulgated by the State of Florida, in particularly any of its election administration laws, when you have attacked the state and its leadership as engaged in warfare against poor and low-income individuals to prevent them from voting?**

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[10] So. Poverty L. Ctr., *SPLC: SCOTUS Decision in Florida Rights Restoration Case is 'Unfortunate, But Not Insurmountable, Setback,'* Jul. 16, 2020 (Abudu SJQ Attachments at 3054).
[11] Nancy Abudu, *We Won a Major Victory for Voting Rights*, SPLC, Feb. 20, 2020 (Abudu SJQ Attachments at 33).

Response: Much of my career has been spent as an advocate for the voting rights, civil rights, and civil liberties of individuals who could not afford to pay for legal representation. That advocacy has occurred in the form of blog posts, press releases, interviews, and other forms of public education. That said, I well understand the difference between the role of an advocate and that of a judge. Our system of laws functions when judges set aside their prior advocacy on behalf of any particular client, as well as any personal views they might have, and rule solely based on the law and the facts of the case before them. I commit wholeheartedly to doing so pursuant to the judicial oath set forth in 28 U.S.C. § 453.

If confirmed, and a case before me involved the State of Florida, I would adjudicate the matter fairly and impartially. I will recuse myself from any case in which I am listed as counsel and any case in which I played a role in the approval and/or filing of the litigation. I believe it is important for federal judges to follow the highest ethical standards and I commit to rigorously adhering to 28 U.S.C. § 455 and the Code of Conduct for United States Judges regarding recusal if I am confirmed.

49. **Will you commit to recusing from cases regarding voting or election-related challenges involving the states of Florida, Georgia, and Alabama in light of your prior statements?**

Response: I will recuse myself from any case in which I am listed as counsel and any case in which I played a role in the approval and/or filing of the litigation. I believe it is important for federal judges to follow the highest ethical standards and I commit to rigorously adhering to 28 U.S.C. § 455 and the Code of Conduct for United States Judges regarding recusal if I am confirmed.

50. **Is the United States systemically racist?**

Response: This is an important question for policymakers to consider. If I am confirmed, my responsibility will be to evaluate cases presenting claims of racial discrimination under the governing laws and based on the record before me.

51. **Are any of the states in the Eleventh Circuit—Florida, Georgia, or Alabama—systematically racist?**

Response: Please see my answer to Question 50.

52. **Is the American criminal justice system systemically racist?**

Response: Please see my answer to Question 50.

53. **In a 2020 SPLC press release, you specifically said that "systemic racism" is**

"embedded in the criminal justice system and other parts of our society."[12] Here is your full quote:

> "Civic activism has been supercharged in the past weeks since the brutal murder of George Floyd and nation-wide protests," said Nancy Abudu, deputy legal director for the SPLC. "Voting is an essential tool in the toolbox to address the systemic racism embedded in the criminal justice system and other parts of our society."

a. **Do you stand by this statement from two years ago that "systemic racism is embedded in the criminal justice system"?**

Response: I made these comments in my role as the deputy legal director for voting rights for the SPLC. As a judicial nominee, I defer to policymakers and academicians to evaluate and comment on which parts of our society might fall within the category of institutions that are designed or act in a manner to disadvantage certain protected classes.

54. **Is the criminal justice system inhumane?**

Response: Please see my answer to Question 53(a).

55. **Does America suffer from "systemic sexism"?**

Response: This is an important question for policymakers to consider. If I am confirmed, my responsibility will be to evaluate claims of sex or gender discrimination under the governing laws and based on the record before me.

56. **Do you believe that Jim Crow is still alive and well in the United States?**

Response: Please see my answer to Question 50.

57. **You are quoted in an SPLC press release, dated Feb. 20, 2020, where you made the following statement:[13]**

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[12] *See* Abudu SJQ Attachments at 3069.

[13] *See* So. Poverty L. Ctr., *SPLC: Weekend Read: 55 Years After 'Bloody Sunday,' Voting Rights Are Still Under Attack*, Feb. 29, 2020 (Abudu SJQ Attachments at 3107).

"Although many people marched, bled, cried, suffered and died for the right to vote, Jim Crow is still alive and well, and continues to cast a long shadow on elections across the country," said Nancy Abudu, SPLC deputy legal director for voting rights. "Elections continue to be confusing and filled with barriers to historically disenfranchised communities. We are deeply engaged in the fight to ensure that everyone can cast a ballot."

a. **Do you stand by this statement from two years ago that "Jim Crow is still alive and well, and continues to cast a long shadow on elections across the country"?**

Response: Much of my career has been spent as an advocate for the voting rights, civil rights, and civil liberties of individuals who could not afford to pay for legal representation. That advocacy has occurred in the form of blog posts, press releases, interviews, and other forms of public education. That said, I well understand the difference between the role of an advocate and that of a judge. Our system of laws functions when judges set aside their prior advocacy on behalf of any particular client, as well as any personal views they might have, and rule solely based on the law and the facts of the case before them. I commit wholeheartedly to doing so pursuant to the judicial oath set forth in 28 U.S.C. § 453.

With respect to that statement, which I made as the deputy legal director for voting rights for the SPLC, I was highlighting the increased burdens that people of color have faced in terms of exercising their fundamental right to vote which some historians, law professors, and other social scientists have compared to Jim Crow.

58. **Are state laws that prohibit former felons from voting "practically the same system as during slavery"?**

Response: Any statements that I have made regarding felony disenfranchisement laws have been made in my capacity as an advocate and the statement that this question refers to was made in my capacity as the deputy legal director for voting rights at the SPLC. The Thirteenth Amendment provides that: "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall be duly convicted, shall exist within the United States, or any place subject to their jurisdiction." U.S. Const. amend. XIII. It is the exemption in the Thirteenth Amendment for those convicted of crimes to which I have referred.

59. **Do you stand by this statement that you made in 2021: "When you add laws that prohibit people with a criminal conviction from voting, it's practically the same system as during slavery"?**

Response: Please see my response to Question 58.

60. **Would it be appropriate for the court to provide its employees trainings which include the following:**

a. **One race or sex is inherently superior to another race or sex;**

b. **An individual, by virtue of his or her race or sex, is inherently racist, sexist, or oppressive;**

c. **An individual should be discriminated against or receive adverse treatment solely or partly because of his or her race or sex; or**

d. **Meritocracy or related values such as work ethic are racist or sexist?**

Response: I am unfamiliar with the employee training programs of any court. It would be my expectation that all employee training programs of any federal court comport with the Constitution.

61. **Will you commit that your court, so far as you have a say, will not provide trainings that teach that meritocracy, or related values such as work ethic and self-reliance, are racist or sexist?**

Response: Please see my response to Question 60.

62. **Is it appropriate to consider skin color or sex when making a political appointment? Is it constitutional?**

Response: If I am confirmed, I would evaluate any challenges to Executive Branch appointments under the governing law, and I would apply any applicable precedents from the Supreme Court and Eleventh Circuit.

63. **Will you commit that you will not engage in racial discrimination when selecting and hiring law clerks and other staff, should you be confirmed?**

Response: If I am confirmed, I will hire staff who are qualified for the position.

64. **Do you believe that Congress should increase, or decrease, the number of justices on the U.S. Supreme Court? Please explain.**

Response: I have not taken a position on the numerical composition of the U.S. Supreme Court. As a judicial nominee, I defer to Congress which has the authority to increase or decrease the size of the Court.

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

Response: The Second Amendment protects "the right of law-abiding, responsible citizens to use arms in defense of hearth and home." *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008); *see also McDonald v. City of Chicago*, 561 U.S. 742 (2010) (holding that the Second Amendment right to keep and bear arms is a fundamental right and applicable to the states through the Fourteenth Amendment).

66. **Does the right to own a firearm receive less protection than the other individual rights specifically enumerated in the Constitution?**

Response: Please see my response to Question 65.

67. **Does the right to own a firearm receive less protection than the right to vote under the Constitution?**

Response: Please see my response to Question 65.

68. **Is it appropriate for the executive under the Constitution to refuse to enforce a law, absent constitutional concerns? Please explain.**

Response: If I am confirmed, I would evaluate any challenges to Executive Branch decisions under the governing law, and I would apply any applicable precedents from the Supreme Court and Eleventh Circuit.

69. **Explain your understanding of what distinguishes an act of mere 'prosecutorial discretion' from that of a substantive administrative rule change.**

Response: Black's Law Dictionary defines prosecutorial discretion as "[a] prosecutor's power to choose from the options available in a criminal case, such as filing charges, prosecuting, not prosecuting, plea-bargaining, and recommending a sentence to the court." Administrative rules changes are governed by the Administrative Procedure Act.

70. **Does the President have the authority to abolish the death penalty?**

Response: The federal death penalty is permitted by 18 U.S.C. § 3591. The President may not unilaterally repeal an act of Congress.

71. **Explain the U.S. Supreme Court's holding on the application to vacate stay in *Alabama Association of Realtors v. HHS*.**

Response: *Alabama Ass'n of Realtors v. Dep't of Health & Hum. Servs.*, 141 S. Ct. 2485 (2021) involved a challenge by realtors and rental property managers who moved to stay the enforcement of a moratorium on evictions during the COVID-19 pandemic. The Supreme Court ruled that the Centers for Disease Control lacked authority to enforce the moratorium and that the plaintiffs had a substantial likelihood of success in their underlying case. *Id*. at 2488. It concluded that the applicants "are at risk of irreparable harm by depriving them of rent payments with no guarantee of eventual recovery," and that the Government's interests had decreased as the harm to the applicants increased. *Id*. at 2489. Lastly, although the Court acknowledged the strong public interest in combating the spread of COVID–19, it held that "our system does not permit agencies to act unlawfully even in pursuit of desirable ends." *Id*. at 2490.

Senator Josh Hawley
Questions for the Record

Nancy Abudu
Nominee, U.S. Court of Appeals for the Eleventh Circuit

1. **Your employer, the Southern Poverty Law Center, has smeared organizations that provide legal representation as "hate groups." The targets of your smear campaigns have included groups like the Alliance Defending Freedom that routinely argue before the Eleventh Circuit. You stated in your questionnaire that you oversee "litigation related to hate groups." Given that you publicly labeled these organizations "hate groups" in your written submission to the Senate, will you commit, if confirmed, to recuse from any case in the Eleventh Circuit where a litigant or counsel has been smeared as a "hate group" or featured as part of the SPLC's "hatewatch"?**

   Response: As the SPLC's Director of Strategic Litigation, my responsibility is to oversee and provide general management over the organization's docket. I do not work in the branch of the organization that is solely responsible for designating certain organizations as anti-government and/or hate groups.

   I will recuse myself from any case in which I am listed as counsel and any case in which I played a role in the approval and/or filing of the litigation. I believe it is important for federal judges to follow the highest ethical standards and I commit to rigorously adhering to 28 U.S.C. § 455 and the Code of Conduct for United States Judges regarding recusal if I am confirmed.

2. **In 2007, a senior fellow at the SPLC said in a speech that "[s]ometimes the press will describe us as monitoring hate crimes and so on." He continued, "I want to say plainly that our aim in life is to destroy these groups, to completely destroy them." Have you ever sought to "completely destroy" any organization or person while at the SPLC?**

   Response: No.

3. **In 2020, you stated, "Our current criminal justice system is one of the most inhumane examples of how racial discrimination operates and can ruin people's lives forever." Judges, of course, are part of our criminal justice system. Why do you want to become part of a system that you believe is racist and inhumane?**

   Response: Much of my career has been spent as an advocate for the voting rights, civil rights, and civil liberties of individuals who could not afford to pay for legal

representation. That advocacy has occurred in the form of blog posts, press releases, interviews, and other forms of public education. That said, I well understand the difference between the role of an advocate and that of a judge. Our system of laws functions when judges set aside their prior advocacy on behalf of any particular client, as well as any personal views they might have, and rule solely based on the law and the facts of the case before them. I commit wholeheartedly to doing so pursuant to the judicial oath set forth in 28 U.S.C. § 453.

The existence and extent of racial discrimination in the criminal justice system are important questions for policymakers to consider. If I am confirmed, my responsibility will be to follow Supreme Court and Eleventh Circuit precedent, and to evaluate claims of racial discrimination under the governing laws and based on the record before me.

4. **In a 2018 article, you were quoted as saying that when a person is convicted of sexually abusing a minor, that conviction "follows them for the rest of their lives," which you thought was "most unfortunate." Why is it "most unfortunate" for a person who preys on children to suffer lifelong consequences?**

   Response: Criminal offenses against children are among the most horrifying acts that can be committed. My work in *Doe v. Miami-Dade County*, 846 F.3d 1180 (11th Cir. 2017) was in my capacity as the legal director of the ACLU of Florida. The organization filed that lawsuit to enhance public safety given the unstable and transitory nature of housing for such individuals. Restrictions on where individuals convicted of such crimes can live can have the perverse effect of reducing public safety because these laws increase the likelihood that such individuals will be unable to find housing. In addition, homelessness makes such individuals even harder for law enforcement to monitor.

5. **Do you agree with the Supreme Court's statement that "[t]he Constitution allows capital punishment. In fact, death was the standard penalty for all serious crimes at the time of the founding"?**

   Response: This quote is taken from the Supreme Court's decision in *Bucklew v. Precythe*, 139 S. Ct. 1112, 1122 (2019). That opinion quoted from a book entitled, "The Death Penalty: An American History." *Bucklew* is precedent of the Supreme Court that I would follow if confirmed to the Eleventh Circuit.

6. **Justice Marshall famously described his philosophy as "You do what you think is right and let the law catch up."**

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

   b. **If not, do you think it is a violation of the judicial oath to hold that philosophy?**

Response: I am not familiar with this quote or its context. Judges must faithfully and impartially apply the law to the facts of each case before them.

7. What is the standard for each kind of abstention in the court to which you have been nominated?

Response: Pursuant to the *Younger* abstention doctrine, federal courts must abstain from adjudicating cases when certain state proceedings are ongoing at the time the federal case is commenced. *31 Foster Children v. Bush*, 329 F.3d 1255, 1274 (11th Cir. 2003). The case that gave rise to the doctrine, *Younger v. Harris*, 401 U.S. 37 (1971), involved a pending state criminal prosecution, but the Supreme Court subsequently extended the doctrine to some state civil proceedings. *See Middlesex Co. Ethics Committee v. Garden State Bar Ass'n*, 457 U.S. 423, 432 (1982). If the underlying case falls within one of three categories, *Younger* abstention is only proper in: "(1) state criminal prosecutions, (2) civil enforcement proceedings, and (3) civil proceedings involving certain orders that are uniquely in furtherance of the state courts' ability to perform their judicial functions." *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 73 (2013) (internal quotation marks and citation omitted).

"Whether state law is susceptible to a construction that will avoid the federal constitutional issues has been described by the Supreme Court as the 'pivotal question' in determining whether [Pullman] abstention is appropriate." *Pittman v. Cole*, 267 F.3d 1269, 1286 (11th Cir. 2001), citing *City of Houston v. Hill*, 482 U.S. 451, 468 (1987). The Eleventh Circuit has identified two primary elements that must be met before the Pullman abstention doctrine can apply: "(1) the case must present an unsettled question of state law, and (2) the question of state law must be dispositive of the case or would materially alter the constitutional question presented." *Siegel v. LePore*, 234 F.3d 1163, 1174 (11th Cir. 2000). "Because abstention is discretionary, it is only appropriate when the question of state law can be fairly interpreted to avoid adjudication of the constitutional question." *Id.*

The *Burford* abstention doctrine applies only when a case "presents difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result in the case then at bar, or if its adjudication in a federal forum would disrupt state efforts to establish a coherent policy with respect to a matter of substantial public concern." *Id*. at 1173 (citing *Boyes v. Shell Oil Prods. Co.*, 199 F.3d 1260, 1265 (11th Cir. 2000). As the Eleventh Circuit has noted, Burford abstention guards against federal interference with state administrative processes. *Id.*

"Colorado River addresses the circumstances in which federal courts should abstain from exercising their jurisdiction because a parallel lawsuit is proceeding in one or

more state courts." *Ambrosia Coal & Construction Co. v. Pages Morales,* 368 F.3d 1320, 1327 (11th Cir. 2004). The doctrine, however, does not apply with respect to duplicative litigation between state and federal courts. *Id.* at 1328; *see also Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976).

The *Rooker-Feldman* doctrine prohibits courts from exercising jurisdiction in certain circumstances where a federal suit follows a state suit. *See Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983). The doctrine "is confined to cases of the kind from which the doctrine acquired its name: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). The Eleventh Circuit has interpreted the *Rooker-Feldman* doctrine to be narrow in scope and only applying if: (1) the plaintiff lost in state court; (2) the plaintiff complains of injuries caused by the state court judgment; (3) that judgment was rendered before the federal suit was filed; and (4) the plaintiff is asking the district court to review and reject the state judgment. *Nicholson v. Shafe*, 558 F.3d 1266, 1279 (11th Cir. 2009).

8. Have you ever worked on a legal case or representation in which you opposed a party's religious liberty claim?

Response: As a civil rights lawyer, I have worked on cases involving issues around free speech, the free exercise of religion, reproductive rights, and the rights of people who are members of the LGBTQ community. Some of those cases have involved arguments related to a party's sincerely held religious belief – including a Hasidic Jewish law enforcement officer I represented who argued that his employer was violating his right to freely exercise his religion; and Muslim pretrial detainees and misdemeanants I represented who challenged a jail's restrictions on their access to Halal meals. To my knowledge, I have never challenged whether a person's belief is sincerely held, and my cases have focused on claims brought under the First Amendment and the Fourteenth Amendment's due process and equal protection clauses.

a. If so, please describe the nature of the representation and the extent of your involvement. Please also include citations or reference to the cases, as appropriate.

Response: Please see my response to Question 8.

9. What role should the original public meaning of the Constitution's text play in the courts' interpretation of its provisions?

Response: If I am fortunate to be confirmed, I will apply the process of constitutional and statutory interpretation based on Supreme Court and Eleventh Circuit precedent. The Supreme Court has primarily evaluated the original public meaning of a constitutional provision at issue. *See e.g.*, *United States v. Jones*, 565 U.S. 400, 404-05, 411 (2012); *District of Columbia v. Heller*, 554 U.S. 570, 576–600 (2008). The Court also has considered the Framer's original intent. *See Crawford v. Washington*, 541 U.S. 36, 53-61 (2004).

10. Do you consider legislative history when interpreting legal texts?

Response: In *Bostock v. Clayton Cty., Georgia*, 140 S. Ct. 1731, 1749 (2020), the Supreme Court reaffirmed that, "when the meaning of the statute's terms is plain, our job is at an end. The people are entitled to rely on the law as written, without fearing that courts might disregard its plain terms based on some extratextual consideration." However, when a statute's meaning is unclear, a court should consider other methods of statutory construction, including similar language in provisions within the same statutory scheme and similar language in other statutes. The Supreme Court has directed that "[l]egislative history, for those who take it into account, is meant to clear up ambiguity, not create it. When presented, on the one hand, with clear statutory language and, on the other, with dueling committee reports, we must choose the language." *Milner v. Dep't of the Navy*, 562 U.S. 562, 574 (2011) (citations omitted).

a. If so, do you treat all legislative history the same or do you believe some legislative history is more probative of legislative intent than others?

Response: Please see my response to Question 10.

b. When, if ever, is it appropriate to consult the laws of foreign nations when interpreting the provisions of the U.S. Constitution?

Response: It would only be proper to do so if the Supreme Court determined that it was appropriate.

11. Under the precedents of the Supreme Court and U.S. Court of Appeals for the Circuit to which you have been nominated, 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 a claim that an execution protocol violates the Eighth Amendment's prohibition on cruel and unusual punishment, a death row inmate must establish "a feasible and readily implemented alternative method of execution that would significantly reduce a substantial risk of severe pain and that the State has refused to adopt without a legitimate penological reason." *Bucklew v. Precythe*, 139 S. Ct. 1112, 1125 (2019) (citations omitted).

12. Under the Supreme Court's holding in *Glossip v. Gross*, 135 S. Ct. 824 (2015), 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: Yes.

13. Has the Supreme Court or the U.S. Court of Appeals for the Circuit to which you have been nominated ever recognized a constitutional right to DNA analysis for habeas corpus petitioners in order to prove their innocence of their convicted crime?

Response: No. *See Alvarez v. Florida*, 679 F.3d 1257, 1264 (11th Cir. 2012) ("the Supreme Court in [*District Attorney's Office for Third Judicial Cir. v. Osborne*, 557 U.S. 52, 72 (2009)] unambiguously concluded that there is no *substantive* due process postconviction right to obtain evidence for DNA testing purposes").

14. 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.

15. Under Supreme Court and U.S. Court of Appeals for the Circuit to which you have been nominated, 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: "[L]aws incidentally burdening religion are ordinarily not subject to strict scrutiny under the Free Exercise Clause so long as they are neutral and generally applicable." *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1876 (2021). The Supreme Court has reasoned that "the government, if it is to respect the Constitution's guarantee of free exercise, cannot impose regulations that are hostile to the religious beliefs of affected citizens and cannot act in a manner that passes

judgment upon or presupposes the illegitimacy of religious beliefs and practices." *Masterpiece Cakeshop, Ltd. v. Colorado C.R. Comm'n*, 138 S. Ct. 1719, 1731 (2018) (citation omitted). "Although a law targeting religious beliefs as such is never permissible, if the object of a law is to infringe upon or restrict practices because of their religious motivation, the law is not neutral, and it is invalid unless it is justified by a compelling interest and is narrowly tailored to advance that interest." *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 533 (1993).

In *Masterpiece Cakeshop*, the Supreme Court held that the government's application of a facially neutral public accommodations law violated the Free Exercise Clause where government officials expressed animus against the plaintiff's sincerely held religious beliefs opposing gay marriage. 138 S. Ct. at 1729-32. In *Tandon v. Newsom*, the Court noted that "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." 141 S. Ct. 1294, 1296 (2021) (emphasis in original). To satisfy strict scrutiny, the government must "show that measures less restrictive of the First Amendment activity could not address its interest." *Id.* at 1296-97.

16. Under Supreme Court and U.S. Court of Appeals for the Circuit to which you have been nominated, 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: Please see my response to Question 15.

17. What is the standard in the U.S. Court of Appeals for the Circuit to which you have been nominated for evaluating whether a person's religious belief is held sincerely?

Response: The Eleventh Circuit applies the Supreme Court's standard for determining whether a belief is religious, as distinguished from political, sociological, or philosophical; it asks whether "(1) the plaintiff holds a belief, not a preference, that is sincerely held and religious in nature, not merely secular; and (2) the law at issue in some way impacts the plaintiff's ability to either hold that belief or act pursuant to that belief." *Cambridge Christian School, Inc. v. Florida High School Athletic Assoc., Inc.*, 942 F.3d 1215, 1246-47 (11th Cir. 2019), quoting *GeorgiaCarry.Org v. Georgia*, 687 F.3d 1244, 1256-57 (11th Cir. 2012) (internal citations omitted). The court has recognized that "'[s]incerely held' is different from 'central,' and courts have rightly shied away from attempting to gauge how central a sincerely held belief is to the believer's religion." *Watts v. Florida Intern. University*, 495 F.3d 1289, 1295 (11th Cir. 2007). Thus, "the test is sincerity, not

centrality," and "courts must not presume to determine the place of a particular belief in a religion or the plausibility of a religious claim." *Id.*

18. The Second Amendment provides that, "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

a. What is your understanding of the Supreme Court's holding in *District of Columbia v. Heller*, 554 U.S. 570 (2008)?

Response: The Second Amendment protects "the right of law-abiding, responsible citizens to use arms in defense of hearth and home." *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008); *see also McDonald v. City of Chicago*, 561 U.S. 742 (2010) (holding that the Second Amendment right to keep and bear arms is a fundamental right and applicable to the states through the Fourteenth Amendment).

b. Have you ever issued a judicial opinion, order, or other decision adjudicating a claim under the Second Amendment or any analogous state law? If yes, please provide citations to or copies of those decisions.

Response: No.

19. Dissenting in *Lochner v. New York*, Justice Oliver Wendell Holmes, Jr. wrote that, "The 14th Amendment does not enact Mr. Herbert Spencer's Social Statics." 198 U.S. 45, 75 (1905).

a. What do you believe Justice Holmes meant by that statement, and do you agree with it?

Response: I believe the statement quoted above is meant to express what Justice Holmes stated elsewhere in his dissenting opinion: that "[the Constitution] is made for people of fundamentally differing views, and the accident of our finding certain opinions natural and familiar, or novel, and even shocking, ought not to conclude our judgment upon the question whether statutes embodying them conflict with the Constitution of the United States." *Lochner v. New York*, 198 U.S. 45, 76 (1905) (Holmes, J. dissenting). The Supreme Court largely abrogated *Lochner* in *West Coast Hotel v. Parrish*, 300 U.S. 379 (1937). If confirmed, I will follow all governing Supreme Court and Eleventh Circuit precedent.

b. Do you believe that *Lochner v. New York*, 198 U.S. 45 (1905), was correctly decided? Why or why not?

Response: It is generally inappropriate for a judicial nominee to comment on the merits of any precedent. However, I note that *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937) largely abrogated *Lochner v. New York*. If confirmed, I will follow all Supreme Court precedent.

20. Are there any Supreme Court opinions that have not been formally overruled by the Supreme Court that you believe are no longer good law?

a. If so, what are they?

Response: I believe there are Supreme Court opinions that have been abrogated by statute or constitutional amendment but that have not been formally overruled. One example is *Buck v. Bell*, 274 U.S. 200 (1927), which was abrogated through legislative acts and cases like *Skinner v. Oklahoma*, 316 U.S. 535 (1942).

b. With those exceptions noted, do you commit to faithfully applying all other Supreme Court precedents as decided?

Response: Yes.

21. Judge Learned Hand famously said 90% of market share "is enough to constitute a monopoly; it is doubtful whether sixty or sixty-four percent would be enough; and certainly thirty-three per cent is not." *United States v. Aluminum Co. of America*, 148 F.2d 416, 424 (2d Cir. 1945).

a. Do you agree with Judge Learned Hand?

Response: If confirmed, I will follow all Supreme Court and Eleventh Circuit precedent regarding what constitutes a monopoly.

b. If not, please explain why you disagree with Judge Learned Hand.

Response: Please see my answer to Question 21(a).

c. What, in your understanding, is in the minimum percentage of market share for a company to constitute a monopoly? Please provide a numerical answer or appropriate legal citation.

Response: The Supreme Court held in *Eastman Kodak Co. v. Image Technical Services, Inc.*, 504 U.S. 451, 481 (1992), that evidence showing that Eastman Kodak controlled 100% of the parts market and 80%-95% of the service market, "with no readily available substitutes," was sufficient to

withstand the company's motion for summary judgment under 15 U.S.C.A. § 2's more stringent standard for a finding of monopoly power. The Court also cited two of its previous cases which held that company holdings of 87% of the market and "over two-thirds of the market," respectively, constituted monopolies. *Id.* (citing *United States v. Grinnell Corp.*, 384 U.S. 563, 571 (1966); *American Tobacco Co. v. United States*, 328 U.S. 781, 797 (1946)).

22. Please describe your understanding of the "federal common law."

Response: In *Erie Railroad Co. v. Tompkins*, the Supreme Court stated that "[t]here is no federal general common law." 304 U.S. 64, 78 (1938). However, the Court has also recognized some instances when a "federal common law" might be a viable claim in the absence of a statute. *Atherton v. F.D.I.C.*, 519 U.S. 213, 218 (1997).

23. If a state constitution contains a provision protecting a civil right and is phrased identically with a provision in the federal constitution, how would you determine the scope of the state constitutional right?

Response: Federal courts must interpret state constitutional provisions in accordance with state law.

a. Do you believe that identical texts should be interpreted identically?

Response: Please see my response to Question 23.

b. Do you believe that the federal provision provides a floor but that the state provision provides greater protections?

Response: Generally speaking, state constitutional or statutory provisions may grant greater protections than the federal Constitution provides.

24. Do you believe that *Brown v. Board of Education*, 347 U.S. 483 (1954) was correctly decided?

Response: The Code of Conduct for United States Judges, Canons 2A and 3A, state that it is inappropriate for a judicial nominee to opine on the propriety of an opinion. I believe *Brown v. Board of Education*, however, is an exception to this general rule. The Supreme Court's decision in *Brown* is unlikely to be revisited or overruled. If I am confirmed, I will follow all binding Supreme Court and Eleventh Circuit precedent.

25. Do federal courts have the legal authority to issue nationwide injunctions?

Response: Federal Rule of Civil Procedure 65 governs the procedures for issuance of an injunction. The relief granted by an injunction should "be no more burdensome to the defendant than necessary to provide complete relief to the [plaintiff]." *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979).

a. If so, what is the source of that authority?

Response: Please my response to Question 25.

b. In what circumstances, if any, is it appropriate for courts to exercise this authority?

Response: Rule 65 requires the movant to show: "a likelihood of success on the merits, that the balance of hardships favor [] Plaintiffs, irreparable harm," and that the injunction will not harm the public. *Georgia Advocacy Office v. Jackson*, 4 F.4th 1200, 1204-05 (11th Cir. 2021).

26. Under what circumstances do you believe it is appropriate for a federal district judge to issue a nationwide injunction against the implementation of a federal law, administrative agency decision, executive order, or similar federal policy?

Response: Please see my response to Question 25.

27. What is your understanding of the role of federalism in our constitutional system?

Response: In *Bond v. United States*, the Supreme Court reasoned that "allocation of powers between the National Government and the States enhances freedom, first by protecting the integrity of the governments themselves, and second by protecting the people, from whom all governmental powers are derived." 564 U.S. 211, 221 (2011).

28. Under what circumstances should a federal court abstain from resolving a pending legal question in deference to adjudication by a state court?

Response: Please see my response to Question 7.

29. What in your view are the relative advantages and disadvantages of awarding damages versus injunctive relief?

Response: If confirmed, my review of any cases on appeal in which the parties seek monetary damages, injunctive relief, or some other relief will be based on the circumstances of each case. My responsibility would be to consider whether the

award of damages or other relief was supported by the governing law and the facts in the record.

30. What is your understanding of the Supreme Court's precedents on substantive due process?

Response: In *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997), the Supreme Court held that the Due Process Clauses of the Fifth and Fourteenth Amendments protect certain unenumerated "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." (internal quotation marks and citations omitted). This concept is known as substantive due process. *See id*. In *Glucksberg*, the Supreme Court gave numerous examples of rights protected by substantive due process: "In a long line of cases, we have held that, in addition to the specific freedoms protected by the Bill of Rights, the 'liberty' specially protected by the Due Process Clause includes the rights to marry, *Loving v. Virginia*, 388 U.S. 1 (1967); to have children, *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942); to direct the education and upbringing of one's children, *Meyer v. Nebraska*, 262 U.S. 390 (1923); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); to marital privacy, *Griswold v. Connecticut*, 381 U.S. 479 (1965); to use contraception, *ibid*.; *Eisenstadt v. Baird*, 405 U.S. 438 (1972); to bodily integrity, *Rochin v. California*, 342 U.S. 165 (1952), and to abortion, [*Planned Parenthood of Pa. v.] Casey* [505 U.S. 833 (1992)]." 521 U.S. at 720.

31. The First Amendment provides "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

a. What is your view of the scope of the First Amendment's right to free exercise of religion?

Response: Please see my response to Question 15.

b. Is the right to free exercise of religion synonymous and coextensive with freedom of worship? If not, what else does it include?

Response: The free exercise of religion is not restricted to just the freedom to worship. The Supreme Court has held that "the 'exercise of religion' often involves not only belief and profession but the performance of (or abstention from) physical acts: assembling with others for a worship service, participating in sacramental use of bread and wine, proselytizing, abstaining

from certain foods or certain modes of transportation." *Emp. Div., Dep't of Hum. Res. of Oregon v. Smith*, 494 U.S. 872, 877 (1990).

c. What standard or test would you apply when determining whether a governmental action is a substantial burden on the free exercise of religion?

Response: In *Burwell v. Hobby Lobby Stores, Inc.*, the Supreme Court ruled that the challenged contraceptive mandate substantially burdened the plaintiffs' free exercise of religion because it compelled compliance with a mandate which violated their sincerely held religious beliefs and noncompliance would have a severe economic impact. 573 U.S. 682, 720 (2014). If confirmed, I will apply *Hobby Lobby* and all other applicable Supreme Court and Eleventh Circuit precedent.

d. Under what circumstances and using what standard is it appropriate for a federal court to question the sincerity of a religiously held belief?

Response: Please see my response to Question 17.

e. Describe your understanding of the relationship between the Religious Freedom Restoration Act and other federal laws, such as those governing areas like employment and education?

Response: In *Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania*, the Supreme Court held that the Religious Freedom Restoration Act (RFRA) "applies to all Federal law, and the implementation of that law, whether statutory or otherwise. RFRA also permits Congress to exclude statutes from RFRA's protections." 140 S. Ct. 2367, 2383 (2020). The Supreme Court has stated that RFRA operates as a kind of "super statute," displacing the normal operation of other federal laws. *Bostock v. Clayton Cty., Georgia*, 140 S. Ct. 1731, 1754 (2020). If confirmed, I will follow all precedent of the Supreme Court and the Eleventh Circuit regarding the relationship between RFRA and other federal laws.

f. Have you ever issued a judicial opinion, order, or other decision adjudicating a claim under the Religious Freedom Restoration Act, the Religious Land use and Institutionalized Person Act, the Establishment Clause, the Free Exercise Clause, or any analogous state law? If yes, please provide citations to or copies of those decisions.

Response: No.

32. Justice Scalia said, "The judge who always likes the result he reaches is a bad judge."

a. What do you understand this statement to mean?

Response: I understand this statement to mean that judges must faithfully apply the law even when the results conflict with their personal views.

33. Have you ever taken the position in litigation or a publication that a federal or state statute was unconstitutional?

Response: Yes.

a. If yes, please provide appropriate citations.

Response: In my role as a civil rights lawyer over the past 20 years, I have filed many lawsuits in which my clients challenged state and federal statutes as unconstitutional on their face and/or as applied. The list of cases is too numerous to list, but some examples appear in my response to Question 17 of my Senate Judiciary Questionnaire along with summaries of those cases.

34. Since you were first contacted about being under consideration for this nomination, have you deleted or attempted to delete any content from your social media? If so, please produce copies of the originals.

Response: No.

35. Do you believe America is a systemically racist country?

Response: The extent of racial discrimination in our society is an important question for policymakers to consider. If I am confirmed, my responsibility will be to follow Supreme Court and Eleventh Circuit precedent, and to evaluate claims of racial discrimination under the governing laws and based on the record before me.

36. Have you ever taken a position in litigation that conflicted with your personal views?

Response: Yes.

37. How did you handle the situation?

Response: Per my ethical duty, I zealously represented my clients and presented colorable legal arguments to advance my clients' interests.

38. If confirmed, do you commit to applying the law written, regardless of your personal beliefs concerning the policies embodied in legislation?

Response: Yes.

39. Which of the Federalist Papers has most shaped your views of the law?

Response: No particular Federalist Paper has most shaped my views of the law.

40. Do you believe that an unborn child is a human being?

Response: To the best of my knowledge, there is no law governing this question. As a judicial nominee, it would be inappropriate for me to offer any personal views about this question because, if I am confirmed, cases involving this question may come before me.

41. Other than at your hearing before the Senate Judiciary Committee, have you ever testified under oath? Under what circumstances? If this testimony is available online or as a record, please include the reference below or as an attachment.

Response: No.

42. In the course of considering your candidacy for this position, has anyone at the White House or Department of Justice asked for you to provide your views on:

a. *Roe v. Wade,* 410 U.S. 113 (1973)?

b. The Supreme Court's substantive due process precedents?

c. Systemic racism?

d. Critical race theory?

Response: No.

43. Do you currently hold any shares in the following companies:

a. Apple?

b. Amazon?

c. Google?

d. Facebook?

e. Twitter?

Response: I currently hold shares with Apple.

44. Have you ever authored or edited a brief that was filed in court without your name on the brief?

a. If so, please identify those cases with appropriate citation.

Response: As a litigator for over 20 years, I have reviewed numerous briefs for which I was not listed as counsel on the filings and was not part of the actual litigation team. Any edits that I have provided range from high-level issues to correcting minor grammatical typos. The cases filed over the past 20 years which fall within this category are too numerous to list.

45. Have you ever confessed error to a court?

a. If so, please describe the circumstances.

Response: To the best of my recollection, there might have been one or two occasions on which I filed errata or corrective statements upon discovering an error in a previous filing.

46. Please describe your understanding of the duty of candor, if any, that nominees have to state their views on their judicial philosophy and be forthcoming when testifying before the Senate Judiciary Committee. *See* U.S. Const. art. II, § 2, cl. 2.

Response: Judicial nominees swear an oath to provide truthful information when testifying before the Senate Judiciary Committee. Pursuant to that oath and guided by their ethical responsibilities as attorneys and judicial nominees, nominees must be candid and forthcoming when they respond to the Committee's questions.

Senator Mike Lee
Questions for the Record
Nancy Abudu, Nominee to be United States Circuit Judge for the Eleventh Circuit

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

Response: I believe the principle of equal justice under law serves as the foundation for how judges should approach the role and responsibilities of being a judge. If I am confirmed, I would treat all litigants fairly and provide them with a meaningful opportunity to be heard. I would remain impartial and unbiased in my application of the governing law to the facts of any case before me. As a neutral arbiter, I would approach all cases with an open mind, encourage thoughtful dialogue with my judicial colleagues, and provide clear and well-reasoned decisions.

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

Response: In *Bostock v. Clayton Cty., Georgia*, 140 S. Ct. 1731, 1749 (2020), the Supreme Court reaffirmed that, "when the meaning of the statute's terms is plain, our job is at an end. The people are entitled to rely on the law as written, without fearing that courts might disregard its plain terms based on some extratextual consideration." However, when a statute's meaning is unclear, a court should consider other methods of statutory construction, including similar language in provisions within the same statutory scheme and similar language in other statutes. The Supreme Court has directed that "[l]egislative history, for those who take it into account, is meant to clear up ambiguity, not create it. When presented, on the one hand, with clear statutory language and, on the other, with dueling committee reports, we must choose the language." *Milner v. Dep't of the Navy*, 562 U.S. 562, 574 (2011) (citations omitted).

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

Response: If I am fortunate to be confirmed, I will apply the process of constitutional and statutory interpretation based on Supreme Court and Eleventh Circuit precedent. The Supreme Court has primarily evaluated the original public meaning of a constitutional provision at issue. *See e.g.*, *United States v. Jones*, 565 U.S. 400, 404-05, 411 (2012); *District of Columbia v. Heller*, 554 U.S. 570, 576–600 (2008). There are, however, instances in which the Court also has considered the Framer's original intent. *See Crawford v. Washington*, 541 U.S. 36, 53-61 (2004).

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

Response: Please see my response to Question 3.

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

Response: Please see my response to Question 2.

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

Response: In *Bostock v. Clayton Cty., Georgia*, 140 S. Ct. 1731, 1750 (2020), the Supreme Court stated that: "Because the law's ordinary meaning at the time of enactment usually governs, we must be sensitive to the possibility a statutory term that means one thing today or in one context might have meant something else at the time of its adoption or might mean something different in another context." The Court went on to state that: "To ferret out such shifts in linguistic usage or subtle distinctions between literal and ordinary meaning, this Court has sometimes consulted the understandings of the law's drafters as some (not always conclusive) evidence." *Bostock*, 140 S. Ct. at 1750.

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

Response: For a plaintiff to have standing, three elements must be satisfied: (1) the plaintiff must have suffered an "injury in fact" that is concrete and particularized and actual or imminent; (2) the injury must be traceable to the challenged action of the defendant; and (3) it must be likely, not merely speculative, that the injury will be redressed by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).

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

Response: In *McCullough v. Maryland*, 17 U.S. 316 (1819), the Supreme Court held that the Necessary and Proper Clause grants Congress powers considered necessary to implement its enumerated powers.

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

Response: I would apply Supreme Court and Eleventh Circuit precedent to determine whether a law falls within the scope of Congress's powers. Cases such as *United States v. Morrison*, 529 U.S. 598 (2000) and *United States v. Lopez*, 514 U.S. 549 (1995) are ones that I would refer to if a case involving the scope of Congress's powers were to appear before me.

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

Response: In *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997), the Supreme Court held that the Due Process Clauses of the Fifth and Fourteenth Amendments protect certain unenumerated "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." (internal quotation marks and citations omitted). This concept is known as substantive due process. *See id*. In *Glucksberg*, the Supreme Court gave numerous examples of rights protected by substantive due process: "In a long line of cases, we have held that, in addition to the specific freedoms protected by the Bill of Rights, the 'liberty' specially protected by the Due Process Clause includes the rights to marry, *Loving v. Virginia*, 388 U.S. 1 (1967); to have children, *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942); to direct the education and upbringing of one's children, *Meyer v. Nebraska*, 262 U.S. 390 (1923); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); to marital privacy, *Griswold v. Connecticut*, 381 U.S. 479 (1965); to use contraception, *ibid*.; *Eisenstadt v. Baird*, 405 U.S. 438 (1972); to bodily integrity, *Rochin v. California*, 342 U.S. 165 (1952), and to abortion, [*Planned Parenthood of Pa. v.] Casey*, [505 U.S. 833 (1992)]." 521 U.S. at 720.

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

Response: Please see my response to Question 9.

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

Response: The Supreme Court itself has distinguished personal rights from economic rights for purposes of substantive due process. The Court determined that the economic rights at issue in *Lochner v. New York* were not protected under the substantive due process, *See, e.g.*, *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937), as opposed to various personal rights which do enjoy substantive due process protections as discussed in my response to Question 7. If confirmed, I will apply all Supreme Court precedent.

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

Response: The Supreme Court has held that the Commerce Clause empowers Congress to regulate three categories of activity: the channels of interstate commerce, the instrumentalities of interstate commerce, and activity that substantially affects interstate commerce. *United States v. Lopez*, 514 U.S. 549, 558-59 (1995).

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

Response: The Supreme Court has defined the "traditional indicia of suspectedness" to include an "immutable characteristic determined solely by the accident of birth" and groups that are "saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process." *Johnson v. Robison*, 415 U.S. 361, 375 n.14 (1974) (citations omitted). The Supreme Court has ruled that groups classified by race, religion, national origin, or alienage are suspect classes. *See Massachusetts Bd. of Retirement v. Murgia*, 427 U.S. 307, 312 n.4 (1976); *City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976).

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

Response: The Supreme Court has reasoned that "the system of separated powers and checks and balances established in the Constitution was regarded by the Framers as a self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of the other." *Morrison v. Olson*, 487 U.S. 654, 693 (1988) (internal quotation marks and citation omitted).

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

Response: I would apply Supreme Court and Eleventh Circuit precedent. If there were no governing precedent regarding a particular constitutional issue, I would analyze Supreme Court and Eleventh Circuit cases that address the scope of the powers granted to the branch of government in question and I would apply those principles to the case before me.

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

Response: A judge's personal views should not influence the outcome of any case. Instead, a judge must remain impartial when adjudicating a case.

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

Response: Both outcomes are equally bad.

18. **From 1789 to 1857, the Supreme Court exercised its power of judicial review to strike down federal statutes as unconstitutional only twice. Since then, the invalidation of federal statutes by the Supreme Court has become significantly**

more common. What do you believe accounts for this change? What are the downsides to the aggressive exercise of judicial review? What are the downsides to judicial passivity?

Response: I have not studied changes in the rate at which the Supreme Court has invalidated statutes and, thus, do not have a basis upon which to opine on this topic.

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

Response: I understand judicial review to refer to the judicial branch's constitutional authority to determine the legality of actions taken by the legislative or executive branch. *See Marbury v. Madison*, 5 U.S. 137 (1803). The term "judicial supremacy" appears to have multiple meanings. Black's Law Dictionary defines judicial supremacy as: "The doctrine that interpretations of the Constitution by the federal judiciary in the exercise of judicial review, esp. U.S. Supreme Court interpretations, are binding on the coordinate branches of the federal government and the states." Black's Law Dictionary (11th ed. 2019).

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

Response: In *Cooper v. Aaron*, 358 U.S. 1, 18 (1958), the Supreme Court ruled that state legislators and executive and judicial officers are bound to follow the Court's decisions interpreting the Constitution.

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

Response: I understand Hamilton's statement to mean that judges have a limited role and should only decide the actual case or controversy before the court.

22. **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 extend the precedent to cover new cases, or limit its application where appropriate and reasonably possible?**

Response: Lower court judges are bound to follow Supreme Court precedent. In doing so, judges must evaluate each case on its own merit and apply the law, including any binding precedent, to the facts of a given case.

23. **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: The United States Sentencing Guidelines Manual provides that race, sex, national origin, creed, religion, and socio-economic status "are not relevant in the determination of a sentence." U.S.S.G. § 5H1.10.

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

Response: I am not familiar with this quote. Black's Law Dictionary (11th ed. 2019) defines equity alternately as "fairness; impartiality; evenhanded dealing" and "[t]he body of principles constituting what is fair and right." The same dictionary defines equality as "the quality, state or condition of being equal; esp., likeness in power or political status."

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

Response: Please see my response to Question 24.

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

Response: The Equal Protection Clause of the Fourteenth Amendment states that, "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const., amend. XIV, § 1.

27. **How do you define "systemic racism?"**

Response: My general understanding is that the phrase "systemic racism" refers to statistical disparities in how certain protected classes are treated in various institutions in our society such as the criminal justice system and education system.

28. **How do you define "critical race theory?"**

Response: Black's Law Dictionary (11th ed. 2019) defines critical race theory as a "reform movement within the legal profession, particularly within academia, whose adherents believe that the legal system has disempowered racial minorities."

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

Response: Please see my responses to Questions 27 and 28.

30. **When asked in your Senate Judiciary Committee Questionnaire about your legal career, you described your role as the Southern Poverty Law Center's Director for Strategic Litigation as follows: "I have taken on significant managerial responsibilities, including overseeing all of the organization's legal programmatic work which, in addition to voting rights, includes immigrants' rights, criminal justice reform, children's rights, LGBTQ rights, and *special litigation related to hate groups*." (emphasis added) Please explain what you meant by "special litigation related to hate groups."**

Response: Since the early 1980s, the SPLC has sued organizations like the Ku Klux Klan, white nationalists, and anti-government groups for their physical and online attacks on people of color and those primarily of the Jewish faith.

31. **Do you agree with the Southern Poverty Law Center's designation of the Alliance Defending Freedom is a hate group? Why or why not?**

Response: As the SPLC's Director of Strategic Litigation, my responsibility is to oversee and provide general management over the organization's docket. I do not work in the branch of the organization that is solely responsible for designating certain organizations as hate groups.

32. **Did you know that the Southern Poverty Law Center signed an amicus brief supporting ADF's position *in Americans for Prosperity v. Becerra* a decision decided in ADF's favor 9-0 by the Supreme Court? Why would Southern Poverty Law Center ever join forces with an organization it had previously labelled as a hate group?**

Response: I played no role in the organization's decision whether to submit a brief in the case. Additionally, I do not work in the branch of the organization that is solely responsible for designating certain organizations as anti-government and/or hate groups.

33. **Do you agree with the Southern Poverty Law Center designation of the Family Research Council is a hate group?**

Response: Please see my response to Question 31.

34. **Did you know that in 2012 Floyd Corkins entered the Family Research Council offices with one hundred rounds of ammunition and shot building manager, Leo Johnson, claiming that he was there to kill employees because they were designated as a hate group by the Southern Poverty Law Center? Why were no changes made to the Southern Poverty Law Center's hate group list after Corkins claimed that his violent act was encouraged by the list?**

Response: Yes, I have been made aware of this frightening and unfortunate 2012 incident. Violence and violent threats are never appropriate. As for the SPLC's hate group list, please see my response to Question 31.

35. **Do you believe that conservative organizations, like the Family Research Council, should be able to advocate for policies without fear of violence even though you and your colleagues at the Southern Policy Law Center might disagree with them?**

Response: Please see my response to Question 31.

36. **When I asked you about Southern Poverty Law Center's role in the cases of Ladinsky v. Ivey and Eknes-Tucker v. Ivey at your hearing, you seemed to say you oversaw the litigation, but that you were not a lead attorney on the case. Were you involved in or briefed on the decision to file a motion for voluntary dismissal in the *Ladinsky* case, which occurred the day it was assigned to Judge Burke?**

Response: No.

37. **Please explain the Southern Poverty Law Center's reason for voluntarily dismissing the *Ladinsky* case and then refiling an almost identical case with new plaintiffs in a different federal District Court in Alabama?**

Response: I was not involved in the decision to voluntarily dismiss the *Ladinsky* case or the decision to refile the case. Therefore, I cannot explain the decision to refile.

38. **How can we see Southern Poverty Law Center's actions in the *Ladinsky* and *Enes-Tucker* cases as anything other than judge shopping?**

Response: Please see my response to Question 37.

Senator Ben Sasse
Questions for the Record for Nancy G. Abudu
U.S. Senate Committee on the Judiciary
Hearing: "Nominations"
April 27, 2022

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

   Response: I believe the principle of equal justice under law serves as the foundation for how judges should approach the role and responsibilities of being a judge. If I am confirmed, I would treat all litigants fairly and provide them with a meaningful opportunity to be heard. I would remain impartial and unbiased in my application of the governing law to the facts of any case before me. As a neutral arbiter, I would approach all cases with an open mind, encourage thoughtful dialogue with my judicial colleagues, and provide clear and well-reasoned decisions.

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

   Response: If I am fortunate to be confirmed, I will apply the process of constitutional and statutory interpretation based on Supreme Court and Eleventh Circuit precedent. The Supreme Court has primarily evaluated the original public meaning of a constitutional provision at issue. *See e.g*., *United States v. Jones*, 565 U.S. 400, 404-05, 411 (2012); *District of Columbia v. Heller*, 554 U.S. 570, 576 (2008). The Court also has considered the Framers' original intent. *See Crawford v. Washington*, 541 U.S. 36, 53-61 (2004).

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

   Response: Please see my response to Question 3.

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

   Response: The meaning of the Constitution is fixed and does not change or evolve over time. Judges are expected to apply Supreme Court and circuit court precedent related to established constitutional principles to new circumstances.

6. **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 carefully studied the jurisprudence of each Supreme Court Justice appointed since 1953 and, therefore, cannot single out any Justice's jurisprudence as the one I most admire.

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

Response: If confirmed to the Eleventh Circuit, I will be bound to follow Supreme Court and Eleventh Circuit precedent. In the Eleventh Circuit, en banc consideration is necessary to overturn Eleventh Circuit precedent in the absence of controlling Supreme Court precedent.

8. **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: Please see my response to Question 7.

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

Response: In *Bostock v. Clayton Cty., Georgia*, 140 S. Ct. 1731, 1749 (2020), the Supreme Court reaffirmed that, "when the meaning of the statute's terms is plain, our job is at an end. The people are entitled to rely on the law as written, without fearing that courts might disregard its plain terms based on some extratextual consideration." However, when a statute's meaning is unclear, a court should consider other methods of statutory construction, including similar language in provisions within the same statutory scheme and similar language in other statutes. The Supreme Court has directed that "[l]egislative history, for those who take it into account, is meant to clear up ambiguity, not create it. When presented, on the one hand, with clear statutory language and, on the other, with dueling committee reports, we must choose the language." *Milner v. Dep't of the Navy*, 562 U.S. 562, 574 (2011) (citations omitted).

10. **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: The United States Sentencing Guidelines Manual provides that race, sex, national origin, creed, religion, and socio-economic status "are not relevant in the determination of a sentence." U.S.S.G. § 5H1.10. 18 U.S.C. § 3553(a) provides the sentencing factors that judges must consider for offenders of federal law. The United States Sentencing Commission has identified "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct" as an important policy objective. 18 U.S.C. § 3553(a)(6).

Questions from Senator Thom Tillis
for Nancy G. Abudu
Nominee to be US Circuit Judge for the
Eleventh Circuit

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: Judicial activism has been defined as a judge allowing their personal views to influence how they rule in cases. Judicial activism is inappropriate because a judge must be fair, impartial, and unbiased. Judges should issue decisions that are based on the application of the law to the facts of any case or controversy before the court and the court's decisions should be clear and well-reasoned.

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

   Response: I believe impartiality is an expectation for a judge.

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

   Response: A judge should never undertake a legal analysis in a case with the goal of reaching a particular desired outcome.

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

   Response: Pursuant to a judge's oath of impartiality, a case should not be adjudicated based on a judge's desired or preferred outcome. It is the application of the law to a particular set of facts presented in a case or controversy that must dictate the outcome of any litigation.

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 uphold the Supreme Court's decisions in *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *McDonald v. City of Chicago*, 561 U.S. 742 (2010) which affirmed an individual's Second Amendment right to keep and bear arms.

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: The Supreme Court has pending before it a case that addresses the issue of whether a state law that requires a showing of "a special need" for self-protection before issuing an unrestricted license to carry a gun violates the Second Amendment. *New York Rifle & Pistol Assoc., Inc. v. Bruen*, Case No. 20-843. Therefore, it would be inappropriate for a judicial nominee to opine as to a matter that is presently before the Court.

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 doctrine of qualified immunity requires: (1) the violation of a statutory or constitutional right; (2) that the right is clearly established; and (3) that a reasonable person would or should have known about the existence of such a right. *Simmons v. Bradshaw*, 879 F.3d 1157, 1162 (11th Cir. 2018), citing *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). The issue of whether an official sued under 42 U.S.C. § 1983 is entitled to the affirmative defense of qualified immunity is a question of law. *Id.* at 1163. A court must consider "'whether the legal norms allegedly violated by the defendant were clearly established at the time of the challenged actions,'" and "'whether the law clearly proscribed the actions the defendant claims he took.'" *Id.*, quoting *Mitchell v. Forsyth*, 472 U.S. 511, 528 (1985). If I am fortunate to be confirmed, I will follow Supreme Court and Eleventh Circuit precedent.

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: In *Rivas-Villegas v. Cortesluna*, 142 S. Ct. 4, 8 (2021), a case involving the defense of qualified immunity, the Supreme Court noted that, "it is sometimes difficult for an officer to determine how the relevant legal doctrine, here excessive force, will apply to the factual situation the officer confronts." I believe the Court's statement is meant to express what this question recognizes – that law enforcement officers face tremendous challenges in protecting public safety and the jurisprudence should reflect that.

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

Response: Please see my response to Question 9.

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

a. What experience do you have with copyright law?

Response: As an attorney, my experience with copyright law has been a general understanding of artists being able to maintain ownership and control over their works, but I have not litigated cases in this area. If I am confirmed, I will carefully study the relevant legal provisions and legal precedent related to this area of the law.

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

Response: I do not have any particular experience involving the Digital Millennium Copyright Act.

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

Response: I do not have any particular experience involving this issue.

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

Response: I have litigated numerous cases involving claims under the First Amendment. My cases have included violations against one's free exercise of religion; the ability of media outlets to disseminate their publications; the right of groups to peaceably assemble; and access to the courts for a redress of grievances. I do not have any particular experience in the area of intellectual property.

13. The legislative history of the Digital Millennium Copyright Act reinforces the statutory text that Congress intended to create an obligation for online hosting services to address infringement even when they do not receive a takedown notice. However, the Copyright

Office recently reported courts have conflated statutory obligations and created a "high bar" for "red flag knowledge, effectively removing it from the statute..." It also reported that courts have made the traditional common law standard for "willful blindness" harder to meet in copyright cases.

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

Response: In *Bostock v. Clayton Cty., Georgia*, 140 S. Ct. 1731, 1749 (2020), the Supreme Court reaffirmed that, "when the meaning of the statute's terms is plain, our job is at an end. The people are entitled to rely on the law as written, without fearing that courts might disregard its plain terms based on some extratextual consideration." However, when a statute's meaning is unclear, a court should consider other methods of statutory construction, including similar language in provisions within the same statutory scheme and similar language in other statutes. The Supreme Court has directed that "[l]egislative history, for those who take it into account, is meant to clear up ambiguity, not create it. When presented, on the one hand, with clear statutory language and, on the other, with dueling committee reports, we must choose the language." *Milner v. Dep't of the Navy*, 562 U.S. 562, 574 (2011) (citations omitted).

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

Response: The doctrines of *Chevron* and *Skidmore* deference govern any review of an administrative agency's interpretation of a statute or regulation. *Chevron* deference applies when an agency decision has the force of law. *See United States v. Mead Corp.*, 533 U.S. 218, 226-27 (2001). Courts will invoke *Skidmore* deference to an agency's policy statements, agency manuals, and enforcement guidelines containing the agency's interpretation of a statute that it administers. *See Christensen v. Harris County*, 529 U.S. 576, 587 (2000). An agency's letter of opinion, for example, warrants *Skidmore* deference "only to the extent that those interpretations have the 'power to persuade.'" *Id*. (citations omitted).

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

Response: If I am confirmed, I will carefully study the relevant legal provisions, legal precedent, and the facts in the record to determine the impact on the online service provider.

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

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

Response: Courts are bound to interpret statutes as written provided the meaning of the language is clear. It is within Congress' authority to amend a statute as needed to address any change in circumstances since the statute's original enactment.

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

Response: If confirmed to the Eleventh Circuit, I will be bound to follow Supreme Court and Eleventh Circuit precedent. Both courts have identified criteria to consider when deciding to overturn its own precedent. The Supreme Court, for example, evaluates the quality of a prior decision, "the workability of the rule it established, its consistency with other related decisions, developments since the decision was handed down, and reliance on the decision." *Janus v. American Fed. of State, County, and Mun. Employees, Council 31*, 138 S. Ct. 2448, 2478-79 (2018). In the Eleventh Circuit, en banc consideration is necessary to overturn Eleventh Circuit precedent in the absence of controlling Supreme Court precedent.

15. In some judicial districts, plaintiffs are allowed to request that their case be heard within a particular division of that district. When the requested division has only one judge, these litigants are effectively able to select the judge who will hear their case. In some instances, this ability to select a specific judge appears to have led to individual judges engaging in inappropriate conduct to attract certain types of cases or litigants. I have expressed concerns about the fact that nearly one quarter of all patent cases filed in the U.S. are assigned to just one of the more than 600 district court judges in the country.

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

Response: I have not studied the issue of "judge shopping" or "forum shopping" within a judicial district, and I do not have a basis upon which to opine on this topic.

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

Response: Please see my response to Question 15(a).

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

Response: Judges should apply the law in a fair and unbiased manner to further instill confidence in the impartiality of the judiciary.

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

Response: Please see my response to Question 15(a).

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

Response: Please see my response to Question 15(a).

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

Response: Please see my response to Question 15(a).

17. Mandamus is an extraordinary remedy that the court of appeals invokes against a district court only when the petitioner has a clear and indisputable right to relief and the district judge has clearly abused his or her discretion.

Nearly every issuance of mandamus may be viewed as a rebuke to the district judge, and repeated issuances of mandamus relief against the same judge on the same issue suggest that the judge is ignoring the law and flouting the court's orders.

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

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

Response: I have not analyzed the frequency of mandamus reversals by the court of appeals and, therefore, I cannot opine on this topic.

18. A former SPLC staffer criticized the group as a "highly profitable scam" to raise money from "gullible" donors. How do you respond to the allegations made by this former staffer?

Response: As an attorney with the SPLC, my primary responsibility is to provide pro bono legal assistance to individuals and community groups that would otherwise not have the legal resources to vindicate their legal rights.

19. How much money did the SPLC bring in this past year? What about the year before? How much money do you have in offshore accounts?

Response: In fiscal year 2020, SPLC had $108,078,656 in contributions and grants. In fiscal year 2019, SPLC had $97,352,445 in contributions and grants. The SPLC does not have any offshore accounts. The organization has one investment manager that is domiciled in the Cayman Islands. The funds they manage make up 2.4% of the SPLC's total endowment investments for fiscal year 2020.

20. How much money did SPLC actually spend on litigation during the past year? What about the year before?

Response: In fiscal year 2020, the SPLC spent $33,018,760 on litigation. In fiscal year 2019, the organization spent $35,706,583 on litigation. These amounts include all expenses associated with SPLC's legal program.

21. Judge Amy Berman Jackson, appointed by President Obama, found that the "SPLC hate list does not depend upon objective data or evidence." Do you agree with her finding that the SPLC definition of hate group is "entirely subjective"?

Response: I am not familiar with this quote or its context. As an attorney within the SPLC's legal department, I do not play a role in the collection, review, and dissemination of information related to hate groups.

22. If an organization which SPLC previously designated as a "hate group" were to come before you as a judge, would you be able to separate your personal views of that organization from the facts and the law at issue? How would you do so?

Response: Yes. I am committed to the principle that all judges must be fair, impartial, and unbiased in their analysis and application of the law to the case or controversy before them.