Senator Chuck Grassley, Ranking Member
Questions for the Record
Judge Colleen R. Lawless
Judicial Nominee to the United States District Court for the Central District of Illinois

1. **Please explain whether you agree or disagree with the following statement: "The judgments about the Constitution are value judgments. Judges exercise their own independent value judgments. You reach the answer that essentially your values tell you to reach."**

   Response: As a current trial court judge and a district court nominee, I am duty bound to uphold the Constitution of the United States and the rule of law in a fair and impartial manner by applying binding Supreme Court and Seventh Circuit precedent. A judge cannot consider personal opinions, values, or facts outside of the record when deciding a case.

2. **When asked why he wrote opinions that he knew the Supreme Court would reverse, Judge Stephen Reinhardt's stock response was, "They can't catch 'em all." Is this an appropriate approach for a federal judge to take?**

   Response: I am not familiar with this statement or the context in which it was made by Judge Reinhardt. If confirmed, I will be duty bound to uphold the Constitution of the United States and the rule of law in a fair and impartial manner by applying binding Supreme Court and Seventh Circuit precedent.

3. **Please define the term "living constitution."**

   Response: Black's Law Dictionary defines "living constitution" as "[a] constitution whose interpretation and application can vary over time according to changing circumstances and changing social values." Constitution, Black's Law Dictionary (11th ed. 2019).

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

   Response: I am not familiar with this statement or the context in which it was made by Justice Ketanji Brown Jackson. A judge cannot consider personal opinions or facts outside of the record when deciding a case. If confirmed, I will be obligated to apply binding Supreme Court and Seventh Circuit precedent.

5. **Please identify a Supreme Court decision from the last 50 years that exemplifies your judicial philosophy and explain why.**

Response: I have not familiarized myself with all of the decisions issued by the Supreme Court in the past 50 years. As a current trial court judge and a district court nominee, I am duty bound to uphold the Constitution of the United States and the rule of law in a fair and impartial manner by applying binding Supreme Court and Seventh Circuit precedent. I approach each case individually and ensure the parties are provided an opportunity to present their case according to the rules of evidence. I thoroughly review the evidence presented, consider arguments of counsel, research applicable law, and prepare a clear, detailed written opinion based on the record presented.

6. **Please identify a Seventh Circuit decision from the last 50 years that exemplifies your judicial philosophy and explain why.**

   Response: Please refer to my response to Question 5.

7. **Do you believe that local governments should reallocate funds away from police departments to other support services? Please explain.**

   Response: As a current trial court judge and a district court nominee, it would be inappropriate to provide an opinion on a matter of policy.

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

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

      Response: As a current trial court judge and district court nominee, it is generally inappropriate to comment on the accuracy of Supreme Court decisions. However, I am comfortable stating this case was correctly decided, because it is widely accepted and the issue of *de jure* segregation is unlikely to be relitigated. If confirmed, I will apply all binding Supreme Court and Seventh Circuit precedent.

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

      Response: As a current trial court judge and district court nominee, it is generally inappropriate to comment on the accuracy of Supreme Court decisions. However, I am comfortable stating this case was correctly decided, because it is widely accepted and the issue of interracial marriage is unlikely to be relitigated. If confirmed, I will apply all binding Supreme Court and Seventh Circuit precedent.

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

      Response: The Supreme Court overturned *Roe v. Wade* in *Dobbs v. Jackson Women's Health,* 142 S. Ct. 2228 (2022). As a current trial court judge and district court nominee, it is generally inappropriate to opine on the accuracy of Supreme Court decisions. If confirmed, I will apply all binding Supreme Court and Seventh Circuit precedent.

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

Response: The Supreme Court overturned *Planned Parenthood v. Casey* in *Dobbs v. Jackson Women's Health,* 142 S. Ct. 2228 (2022). As a current trial court judge and district court nominee, it is generally inappropriate to opine on the accuracy of Supreme Court decisions. If confirmed, I will apply all binding Supreme Court and Seventh Circuit precedent.

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

Response: As a current trial court judge and district court nominee, I am obligated to apply *Griswold v. Connecticut* as binding precedent, but it is generally inappropriate to opine on the accuracy of Supreme Court decisions. If confirmed, I will apply all binding Supreme Court and Seventh Circuit precedent.

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

Response: As a current trial court judge and district court nominee, I am obligated to apply *Gonzales v. Carhart* as binding precedent, but it is generally inappropriate to opine on the accuracy of Supreme Court decisions. If confirmed, I will apply all binding Supreme Court and Seventh Circuit precedent.

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

Response: As a current trial court judge and district court nominee, I am obligated to apply *McDonald v. City of Chicago* as binding precedent, but it is generally inappropriate to opine on the accuracy of Supreme Court decisions. If confirmed, I will apply all binding Supreme Court and Seventh Circuit precedent.

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

Response: As a current trial court judge and district court nominee, I am obligated to apply *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* as binding precedent, but it is generally inappropriate to opine on the accuracy of Supreme Court decisions. If confirmed, I will apply all binding Supreme Court and Seventh Circuit precedent.

i. **Was *New York State Rifle & Pistol Association v. Bruen* correctly decided?**

Response: As a current trial court judge and district court nominee, I am obligated to apply *New York State Rifle & Pistol Association v. Bruen* as binding precedent, but it is generally inappropriate to opine on the accuracy of Supreme Court decisions. If confirmed, I will apply all binding Supreme Court and Seventh Circuit precedent.

j. **Was *Dobbs v. Jackson Women's Health* correctly decided?**

Response: As a current trial court judge and district court nominee, I am obligated to apply *Dobbs v. Jackson Women's Health* as binding precedent, but it is generally inappropriate to opine on the accuracy of Supreme Court decisions. If confirmed, I will apply all binding Supreme Court and Seventh Circuit precedent.

9. **Please explain your understanding of 18 USC § 1507 and what conduct it prohibits.**

   Response: 18 U.S.C.A. § 1507 prohibits a person from picketing, parading, using any sound-truck or similar device, or resorting to any other demonstration in or near a building housing a court of the United States, or in or near a building or residence occupied or used by a judge, juror, witness or court officer, in discharge of his duty, with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness or court officer, in the discharge of his duty. If confirmed, I would follow Supreme Court and Seventh Circuit precedent in the interpretation and application of this law.

10. **Under Supreme Court precedent, is 18 USC § 1507 or a state analog statute constitutional on its face?**

    Response: I am not aware of any Supreme Court or Seventh Circuit decision addressing that question. As a current trial court judge and district court nominee, it would be inappropriate to provide an opinion on a matter that may appear before me.

11. **What is the operative standard for determining whether a statement is not protected speech under the "fighting words" doctrine?**

    Response: The Supreme Court established in *Chaplinsky v. New Hampshire*, that a State may punish those words "which by their very utterance inflict injury or tend to incite an immediate breach of the peace." *Chaplinsky v. New Hampshire*, 315 U.S. 568, 572 (1942). Fighting words are defined as "those personally abusive epithets which, when addressed to the ordinary citizen, are, as a matter of common knowledge, inherently likely to provoke violent reaction." *Virginia v. Black*, 538 U.S. 343, 359 (2003) (quoting *Cohen v. California*, 403 U.S. 15, 20 (1971)). The Seventh Circuit has held that speech inflicting psychic trauma alone—without any tendency to provoke responsive violence or an immediate breach of the peace—does not lose constitutional protection under the fighting-words doctrine. *Purtell v. Mason*, 527 F.3d 615, 624–25 (7th Cir. 2008) (citing *Collin v. Smith*, 578 F.2d 1197, 1203 (7th Cir. 1978)).

12. **What is the operative standard for determining whether a statement is not protected speech under the true threats doctrine?**

    Response: The Supreme Court in *Virginia v. Black*, defined "true threats" as those statements "where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals" but the speaker must not actually intend to carry out the threat. *Virginia v. Black*, 538 U.S.

343, 359 (2003). Instead, the prohibition on true threats "protect[s] individuals from the fear of violence" and "from the disruption that fear engenders," in addition to protecting people "from the possibility that the threatened violence will occur." *Id*. Intimidation in the constitutionally proscribable sense of the word is a type of true threat, where a speaker directs a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death. *United States v. Parr*, 545 F.3d 491, 499 (7th Cir. 2008) (citing *Virginia v. Black*, 538 U.S. 343, 359–60 (2003)).

13. **How do you distinguish between "attacks" on a sitting judge and mere criticism of an opinion he or she has issued?**

    Response: As a current trial court judge and a district court nominee, it would be inappropriate to provide an opinion on a matter that may appear before me. If confirmed, I will apply the binding Supreme Court and Seventh Circuit precedent to the specific facts of the case.

14. **Do you think the Supreme Court should be expanded?**

    Response: As a current trial court judge and a district court nominee, it would be inappropriate to provide an opinion on a matter of policy.

15. **Is the federal judicial system systemically racist? Please explain.**

    Response: I have not conducted research on the issue of "systemic racism" to form an opinion on the matter. As a current trial court judge, I ensure that every litigant who comes into my courtroom is treated fairly, respectfully, and impartially regardless of their race, gender, religion, or any other attribute. If confirmed, I will continue to do the same for litigants in the Central District of Illinois and determine the outcome of their case on the record before me.

    a. **If you answered yes, if confirmed how will you feel comfortable working in a systemically racist system?**

       Response: Not applicable.

16. Is the federal judiciary affected by implicit bias?

Response: As a state trial court judge, I have participated in trainings on the presence of implicit bias in all individuals according to social science research. If confirmed, I will ensure that every litigant who comes into my courtroom is treated fairly, respectfully, and impartially regardless of their race, gender, religion, or any other attribute, and I will determine the outcome of each case by applying binding Supreme Court and Seventh Circuit precedent to the specific facts of the case.

17. **What is more important during the COVID-19 pandemic: ensuring the safety of the community by keeping violent, gun re-offenders incarcerated or releasing violent, gun-offenders to the community?**

    Response: If presented with such an issue, I would follow the appropriate statutes by assessing and balancing the applicable factors and reaching a decision based on the facts of the specific case. My understanding of federal criminal law is that decisions regarding sentencing, pretrial release versus detention, and/or compassionate release generally require judges to determine whether an individual meets certain criteria and then to weigh specific factors, including whether any action can be taken consistent with protecting the public.

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

    Response: The Supreme Court recently held in *New York Rifle and Pistol Association, Inc. v. Bruen*, that "when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct." *New York Rifle and Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111 (2022). In order to justify the regulation and conclude that the individual's conduct falls outside of the Second Amendment, the government must demonstrate that the regulation is consistent with the historical tradition of firearm regulation in the United States. *Id*. at 2126. (2022). If confirmed, I will apply all binding Supreme Court and Seventh Circuit precedent.

19. **What is implicit bias?**

    Response: I am not aware of any Supreme Court or Seventh Circuit decision providing a definition of implicit bias. To the best of my knowledge, it is generally defined as unconsciously held beliefs, attitudes, and judgments.

20. **Do you have any implicit biases? If so, what are they?**

    Response: As a state trial court judge, I have participated in trainings on the presence of implicit bias. As a current trial court judge, I ensure that every litigant who comes into my courtroom is treated fairly, respectfully, and impartially regardless of their race, gender, religion, or any other attribute. If confirmed, I will continue to do the same for litigants in the Central District of Illinois and determine the outcome of the case on the record before me.

21. **During your selection process, did you talk with anyone from or anyone directly associated with the Raben Group or the Committee for a Fair Judiciary? If so, what was the nature of those discussions?**

    Response: I did not speak with anyone associated with Raben Group or the Committee for a Fair Judiciary nor am I aware of anyone speaking to those entities on my behalf.

22. **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: I did not speak with anyone associated with Demand Justice nor am I aware of anyone speaking to Demand Justice on my behalf.

23. **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: I did not speak with anyone associated with American Constitution Society nor am I aware of anyone speaking to American Constitution Society on my behalf.

24. **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: I did not speak with anyone associated with the aforementioned entities nor am I aware of anyone speaking to said entities on my behalf.

25. **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: I did not speak with anyone associated with Open Society Foundation nor am I aware of anyone speaking to Open Society Foundation on my behalf.

26. **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?**
    b. **Are you currently in contact with anyone associated with Demand Justice, including, but not limited to: Brian Fallon, Christopher Kang, Tamara Brummer, Katie O'Connor, Jen Dansereau, Faiz Shakir, and/or Stasha Rhodes?**
    c. **Have you ever been in contact with anyone associated with Demand Justice, including, but not limited to: Brian Fallon, Christopher Kang, Tamara Brummer, Katie O'Connor, Jen Dansereau, Faiz Shakir, and/or Stasha Rhodes?**

    Response to all subparts (a), (b), and (c): No.

27. **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?**
    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?**
    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 to all subparts (a), (b), and (c): No.

28. **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?**
    b. **Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund.**
    c. **Are you currently in contact with anyone associated with Arabella Advisors? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.**
    d. **Have you ever been in contact with anyone associated with Arabella Advisors? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.**

    Response to all subparts (a), (b), (c), and (d): No.

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

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

Response to all subparts (a), (b), and (c): No.

30. **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?**
    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?**
    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 to all subparts (a), (b), and (c): No.

31. **The Raben Group is "a national public affairs and strategic communications firm committed to making connections, solving problems, and inspiring change across the corporate, nonprofit, foundation, and government sectors." It manages the Committee for a Fair Judiciary.**
    a. **Has anyone associated with The Raben Group or the Committee for a Fair Judiciary 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?**
    b. **Are you currently in contact with anyone associated with the Raben Group or the Committee for a Fair Judiciary, including but not limited to: Robert Raben, Jeremy Paris, Erika West, Elliot Williams, Nancy Zirkin, Rachel Motley, Steve Sereno, Dylan Tureff, or Joe Onek?**
    c. **Have you ever been in contact with anyone associated with the Raben Group or the Committee for a Fair Judiciary, including but not limited to: Robert Raben, Jeremy Paris, Erika West, Elliot Williams, Nancy Zirkin, Rachel Motley, Steve Sereno, Dylan Tureff, or Joe Onek?**

Response to all subparts (a), (b), and (c): No.

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

Response: Senator Dick Durbin established a screening committee to evaluate applications for the judicial vacancy in the Central District of Illinois. I submitted my application on May 23, 2022. I interviewed with the screening committee on May 27, 2022. The committee recommended my candidacy, along with others, to Senator Durbin. I interviewed with Senator Durbin on May 31, 2022, and with Senator Tammy Duckworth on June 8, 2022. Two days later, Senator Durbin forwarded my name, along with others, to the White House for consideration for nomination by the President. On June 10, 2022, I received an email from an attorney in the White House Counsel's Office. Since June 10, 2022, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On September 6, 2022, my nomination was submitted to the Senate.

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

Response: I received the questions from the Office of Legal Policy (OLP) on November 22, 2022. I prepared draft answers based on my individual research and shared them with OLP. I reviewed the suggestions and submitted final answers for submission to the Senate Judiciary Committee.

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

<u>Questions for the Record for Colleen R. Lawless, Nominee for the United States District Judge for the Central District of Illinois</u>

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. Racial discrimination as defined by Congress in the Civil Rights Act of 1964 and Fair Housing Act of 1968, among others, is illegal. The Supreme Court has held classifications on the basis of race are subject to strict scrutiny.

2. **Are there any unenumerated rights in the Constitution, as yet unarticulated by the Supreme Court that you believe can or should be identified in the future?**

   Response: As a current trial court judge and district court nominee, it would be inappropriate to provide a personal opinion on a matter that may appear before me. If confirmed, I am obligated to apply binding Supreme Court and Seventh Circuit precedent regarding issues of constitutional interpretation.

3. **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: As a current trial court judge, I am duty bound to uphold the Constitution of the United States and the rule of law in a fair and impartial manner by applying Supreme Court and Seventh Circuit precedent. I approach each case individually and ensure the parties are provided an opportunity to present their case according to the rules of evidence. I thoroughly review the evidence presented, consider arguments of counsel, research applicable law, and prepare a clear, detailed written opinion based on the record presented. I do not use a particular label to characterize my judicial philosophy.

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

   Response: Black's Law Dictionary defines "originalism" as a doctrine of interpretation in which "words of a legal instrument are to be given the meanings they had when they were adopted." Originalism, Black's Law Dictionary (11th ed. 2019). I do not use a particular label to characterize my judicial philosophy. If confirmed, I am obligated to apply binding Supreme Court and Seventh Circuit precedent regarding issues of constitutional interpretation.

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

   Response: Black's Law Dictionary defines "living constitutionalism" as a doctrine in which "the Constitution should be interpreted and applied in accordance with the changing circumstances, and, in particular, with changes in social values." Living constitutionalism, Black's Law Dictionary (11th ed. 2019). I do not use a particular label to characterize my judicial philosophy. If confirmed, I am obligated to apply binding Supreme Court and Seventh Circuit precedent regarding issues of constitutional interpretation.

6. **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: When the meaning of a constitutional provision or statute is clear, the judicial analysis stops there. "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." *Bostock v. Clayton Cnty., Georgia*, 140 S. Ct. 1731, 1749 (2020).

7. **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: The public's current understanding of the Constitution is not generally relevant in interpretation of the Constitution. However, the Supreme Court has considered the contemporary meaning when analyzing certain First and Eighth Amendment issues. *See Miller v. California*, 413 U.S. 15, 24 (1973); *Atkins v. Virgina*, 536 U.S. 304, 311-312 (2002). If confirmed, I am obligated to apply binding Supreme Court and Seventh Circuit precedent regarding issues of constitutional interpretation.

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

Response: No. The Constitution is a fixed, enduring document. Any changes to the text of the Constitution must be in compliance with the Article V amendment process. The Supreme Court sets forth the manner in which the Constitution shall be interpreted and, if confirmed, I will apply binding Supreme Court and Seventh Circuit precedent regarding issues of constitutional interpretation.

9. **Is the Supreme Court's ruling in *Dobbs v. Jackson Women's Health Organization* settled law?**

Response: *Dobbs v. Jackson Women's Health Organization* is binding Supreme Court precedent that I will apply if I am confirmed as a district court judge.

a. **Was it correctly decided?**

Response: As a current trial court judge and district court nominee, it is generally inappropriate to opine on the accuracy of Supreme Court decisions.

10. **Is the Supreme Court's ruling in *New York Rifle & Pistol Association v. Bruen* settled law?**

Response: *New York Rifle & Pistol Association v. Bruen* is binding Supreme Court precedent that I will apply if I am confirmed as a district court judge.

a. **Was it correctly decided?**

Response: As a current trial court judge and district court nominee, it is generally inappropriate to opine on the accuracy of Supreme Court decisions.

11. **Is the Supreme Court's ruling in *Brown v. Board of Education* settled law?**

Response: *Brown v. Board of Education* is binding Supreme Court precedent that I will apply if I am confirmed as a district court judge.

a. **Was it correctly decided?**

Response: As a current trial court judge and district court nominee, it is generally inappropriate to comment on the accuracy of Supreme Court decisions. However, I am comfortable stating this case was correctly decided, because it is widely accepted and the issue of *de jure* segregation is unlikely to be relitigated. If confirmed, I will apply all binding Supreme Court and Seventh Circuit precedent.

12. **What sort of offenses trigger a presumption in favor of pretrial detention in the federal criminal system?**

Response: The Bail Reform Act of 1984 creates a rebuttable presumption "that no condition or combination of conditions will reasonably assure the safety of any other person and the community" if the judge finds a person meets certain criteria regarding prior convictions of specific offenses including, but not limited to: specific crimes of violence or drug offenses carrying maximum terms of imprisonment for 10 years or more; offenses carrying maximum sentence of life imprisonment or death; certain offenses involving a minor victim; and offenses involving the possession or use of a firearm, destructive device or any other dangerous weapon. 18 U.S.C. § 3142(e)(2) and (f)(1). In addition, there is a rebuttable presumption "that no condition or combination of conditions will reasonably assure . . . safety of the community if the judicial officer finds there is probable cause to believe that the person committed" one of an enumerated list of offenses, including, but not limited to: certain drug offenses carrying maximum term of imprisonment of ten years or more; specific crimes of violence; unlawful firearm offenses; and certain offenses involving a minor victim. 18 U.S.C. § 3142(e)(3).

a. **What are the policy rationales underlying such a presumption?**

Response**:** The Seventh Circuit discussed the presumption in terms of the Congressional findings that "certain offenders, including narcotics violators, as a group are likely to continue to engage in criminal conduct undeterred either by the pendency of charges against them or by the imposition of monetary bond or other release conditions." *United States v. Dominguez*, 783 F.2d 702, 707 (7th Cir. 1986).

13. **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: Yes. Under the Establishment Clause and Free Exercise Clause of the First Amendment, a government "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 Civil Rights Comm'n*, 138 S. Ct. 1719, 1731 (2018) (citing *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 532-534 (1993)). If the government action is facially neutral and generally applicable, the law is subject to rational basis review. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S.

520, 531 (1993). In determining whether a government action is truly neutral, the court must consider relevant factors such as "the historical background of the decision under challenge, the specific series of events leading to the enactment or official policy in question, and the legislative or administrative history, including contemporaneous statements made by members of the decision-making body." *Id*. at 540.

Additionally, the Religious Freedom Restoration Act (RFRA) prohibits the federal government from "substantially burden[ing] a person's exercise of religion even if the burden results from a rule of general applicability" unless the Government "demonstrates that application of the burden to the person—(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 705 (2014) (citing 42 U.S.C. §§ 2000bb–1(a), (b)).

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

Response: The Supreme Court has recognized the protections under the Free Exercise Clause arise when a "law discriminates against some or all religious beliefs or regulates or prohibits conduct because it is undertaken for religious reasons." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 532 (1993). The government 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 Civil Rights Comm'n*, 138 S. Ct. 1719, 1731 (2018). Any laws that are not neutral and generally applicable must be narrowly tailored to achieve a compelling governmental interest. *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 67 (2020).

Additionally, the Religious Freedom Restoration Act (RFRA) prohibits the federal government from "substantially burden[ing] a person's exercise of religion even if the burden results from a rule of general applicability" unless the Government "demonstrates that application of the burden to the person—(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 705 (2014) (citing 42 U.S.C. §§ 2000bb–1(a), (b)).

15. **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 enjoined enforcement of the executive order pending appellate review, because the challenged restrictions violated the First Amendment right to free exercise of religion. The Court held the executive order was not narrowly tailored to serve the compelling state interests when there were many other "less restrictive rules that could have been adopted to minimize the risk to those attending religious services." *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 67 (2020). The Supreme

Court further held that the loss of First Amendment rights unquestionably causes irreparable harm and the State failed to show "public health would be imperiled if less restrictive measures were imposed." *Id.* at 68.

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

Response: The Supreme Court enjoined enforcement of the executive order pending appellate review, because the applicants demonstrated they were likely to succeed on the merits of their free exercise claim and they were irreparably harmed by the loss of free exercise rights. *Tandon v. Newsom*, 141 S. Ct. 1294, 1297 (2021). "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. When analyzing COVID-19 restrictions, the Court established narrow tailoring under strict scrutiny requires "the government to show that measures less restrictive of the First Amendment activity could not address its interest in reducing the spread of COVID." *Id.* at 1296–97. The government must show that religious exercises are more dangerous than other permitted activities. *Id.* The Court held the State failed to show that "public health would be imperiled" by employing less restrictive measures. *Id*. at 1297.

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

Response: Yes.

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

Response: The Supreme Court held the Colorado Civil Rights Commission violated the Free Exercise Clause when it acted with hostility toward the petitioner's objections based on his sincerely held religious beliefs. In finding the Commission failed to proceed in a manner neutral toward and tolerant of the petitioner's religious beliefs, the Court looked at the Commission's favorable treatment of similar conscience-based objections and specific hostile statements made by the Commission at formal, public hearings. *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n*, 138 S. Ct. 1719, 1730 (2018). The Court held the Commission's actions demonstrated the petitioner was not afforded a "neutral decision-maker who would give full and fair consideration to his religious objection" as required by the Free Exercise Clause." *Id.* at 1732.

19. **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: The Supreme Court has repeatedly held that an individual's sincerely held religious beliefs are protected by the First Amendment. In *Frazee*, the Supreme Court rejected the notion that one must be responding to the commands of a particular religious organization to classify as a sincerely held religious belief. *Frazee v. Illinois Dept. of Employment Sec.*, 489 U.S. 829, 834 (1989) (finding "[s]tates are clearly entitled to assure themselves that there is an ample predicate for invoking the Free Exercise Clause"). While the judiciary must determine whether an individual's religious belief is an "honest conviction," the belief in question does not need to be

"acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." *Thomas v. Review Bd. of Indiana Employment Sec. Div.*, 450 U.S. 707, 714 (1981) (finding "[c]ourts are not arbiters of scriptural interpretation").

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

   Response: Please refer to my response to Question 19.

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

   Response: Please refer to my response to Question 19.

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

   Response: As a current trial court judge and district court nominee, it would not be appropriate to speculate as to an official position of a religious organization.

20. **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: The First Amendment protects the right of religious institutions "to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2055 (2020). In *Morrisey-Berru*, the Court held the "ministerial exception" requiring courts to stay out of employment disputes involving important positions within churches and other religious institutions applies "when a school with a religious mission entrusts a teacher with the responsibility of educating and forming students in the faith." *Id*. at 2069. In determining whether the exception applies, the Court held there should not be a rigid formula, but, instead, the courts should take "all relevant circumstances into account and determine whether each particular position implicate[s] the fundamental purpose of the exception." *Id*. at 2067. The teachers in question performed "vital religious duties" in guiding the Catholic education of the children, participating in various religious activities during the day and were expected to help the school carry out their religious mission. *Id.* at 2066.

21. **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*, the Supreme Court held the City of Philadelphia's refusal to renew its foster care contract with a Catholic agency due to the agency's objection to same-sex couples as foster parents violated the Free Exercise Clause of the First Amendment. *Fulton v. City of Philadelphia, Pennsylvania*, 141 S. Ct. 1868, 1882 (2021). The City claimed the agency's practice of refusing to certify same-sex

couples violated the City's nondiscrimination clause of their standard contract. *Id*. at 1878. However, the Court found the nondiscrimination clause was not generally applicable when it included a "formal system of entirely discretionary exceptions." *Id*. After applying strict scrutiny, the Court held the City failed to provide a compelling reason for offering exceptions to others while denying the exception to Catholic Social Services. *Id*. at 1882.

22. **In *Carson v. Makin*, the U.S. Supreme Court struck down Maine's tuition assistance program because it discriminated against religious schools and thus undermined Mainers' Free Exercise rights. Explain your understanding of the Court's holding and reasoning in the case.**

Response: In *Carson v. Makin*, the Supreme Court held Maine's "nonsectarian" requirement for its otherwise generally available tuition assistance payments violated the Free Exercise Clause of the First Amendment. *Carson. v. Makin*, 142 S. Ct. 1987 (2022). Under the tuition program, the state would provide assistance to parents in districts where there was no secondary school as long as their child attended a public or "nonsectarian" private school. In reliance on its prior holdings in *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017) and *Espinoza v. Montana Department of Revenue*, 140 S. Ct. 2246 (2020), the Court found Maine's tuition assistance program "effectively penalize[d] the free exercise" of religion when it conditioned receipt of the benefits on the religious character of the school. *Id.* at 1997. The Court held consistent with *Espinoza* that "[a] State need not subsidize private education, but once a State decides to do so, it cannot disqualify some private schools because they are religious." *Id*. at 2000.

23. **Please explain your understanding of the U.S. Supreme Court's holding and reasoning in *Kennedy v. Bremerton School District*.**

Response: In *Kennedy v. Bremerton School District*, the Supreme Court held the District's suspension of a teacher for his "brief, quiet, personal religious observance" violated his free exercise and free speech rights. *Kennedy v. Bremerton Sch. Dist*., 142 S. Ct. 2407 (2022). Based on its own admission, the Court held the District's challenged policies were neither neutral nor generally applicable giving rise to the strict scrutiny analysis. *Id*. at 2422–23. The Court rejected the District's reliance upon the Establishment Clause to support the suspension after interpreting the Clause by "reference to historical practices and understandings." *Id*. at 2428. The Court described the District's actions as discriminatory and held that the only offered justification for the suspension "rested on a mistaken view that it had a duty to ferret out and suppress religious observances even as it allows comparable secular speech" in violation of the Free Exercise and Free Speech Clauses of the First Amendment. *Id*. at 2432-33.

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

Response: In *Mast v. Fillmore County*, the Supreme Court remanded the case back to the Court of Appeals for further consideration in light of its recent decision in *Fulton v. Philadelphia,* 141 S. Ct. 1868 (2021). *Mast v. Fillmore County*, 141 S. Ct. 2430 (2021). The case in question centered on Fillmore County's refusal to grant an exception to the County's septic system mandate requested by an Amish community based on their sincerely held religious beliefs. *Id.* at 2431. In his concurrence, Justice Gorsuch explained that the County and lower courts erred in the application of the strict scrutiny analysis

required under the Religious Land Use and Institutionalized Persons Act (RLUIPA) "by treating the County's general interest in sanitation regulations as 'compelling' without reference to the specific application of those rules to *this* community." *Id.* at 2432. Under the analysis, the County was required to provide a "compelling reason why it has a particular interest in denying an exception to [a religious claimant] while making [exceptions] available to others." *Id.* Justice Gorsuch also recognized that the County and lower courts failed to give sufficient weight to exceptions granted to other groups and rules from other jurisdictions allowing the mulch basis exception. *Id.* at 2433.

25. **Some people claim that Title 18, Section 1507 of the U.S. Code should not be interpreted broadly so that it does not infringe upon a person's First Amendment right to peaceably assemble. How would you interpret the statute in the context of the protests in front the homes of U.S. Supreme Court Justices following the *Dobbs* leak?**

Response: I am not familiar with any Supreme Court or Seventh Circuit decision interpreting 18 U.S.C. § 1507 in that context. As a trial court judge and district court nominee, it would be inappropriate for me to provide an opinion on an issue that may appear before me. If confirmed, I will apply binding Supreme Court and Seventh Circuit precedent interpreting the statute and issue a decision based on the facts presented.

26. **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;**

Response: I am not familiar with any court-approved trainings regarding this issue. Trainings provided by the federal courts must be consistent with the Constitution and laws of the United States.

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

Response: I am not familiar with any court-approved trainings regarding this issue. Trainings provided by the federal courts must be consistent with the Constitution and laws of the United States.

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

Response: I am not familiar with any court-approved trainings regarding this issue. Trainings provided by the federal courts must be consistent with the Constitution and laws of the United States.

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

Response: I am not familiar with any court-approved trainings regarding this issue. Trainings provided by the federal courts must be consistent with the Constitution and laws of the United States.

27. **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: I will commit that trainings will be consistent with the Constitution and the laws of the United States.

28. **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: Yes. I will utilize a wide range of factors when evaluating law clerks and other staff.

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

    Response: The President is granted appointment power, with the advice and consent of the Senate, under Article II, Section 2 of the Constitution. As a current trial court judge and district court nominee, it would be inappropriate to offer an opinion on how the constitutional power is exercised.

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

    Response: I have not conducted research on the issue of "systemic racism" to form an opinion on the matter. As a current trial court judge, I ensure that every litigant who comes into my courtroom is treated fairly, respectfully, and impartially regardless of their race, gender, religion, or any other attribute. If confirmed, I will continue to do the same for litigants in the Central District of Illinois and determine the outcome of each case by applying binding Supreme Court and Seventh Circuit precedent to the specific facts of the case.

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

    Response: As a current trial court judge and district court nominee, it would be inappropriate to provide an opinion on a matter of policy. If confirmed, I will apply all binding Supreme Court and Seventh Circuit precedent regardless of the number of justices on the court at the time.

32. **In your opinion, are any currently sitting members of the U.S. Supreme Court illegitimate?**

    Response: No.

33. **What do you understand to be the original public meaning of the Second Amendment?**

    Response: After analyzing the original public meaning, the Supreme Court held the Second Amendment protects an individual's right to keep and bear arms for traditionally lawful purposes such as self-defense. *District of Columbia v. Heller*, 554 U.S. 570, 592 (2008).

34. **What kinds of restrictions on the Right to Bear Arms do you understand to be prohibited by the U.S. Supreme Court's decisions in *United States v. Heller*, *McDonald v. Chicago*, and *New York State Rifle & Pistol Association v. Bruen*?**

Response: The Supreme Court has recognized that the Second and Fourteenth Amendments protect the right of an ordinary, law-abiding citizen to possess a handgun inside and outside the home for self-defense. *District of Columbia v. Heller*, 554 U.S. 570 (2008); *McDonald v. Chicago,* 561 U.S. 742 (2010); *New York State Rifle and Pistol v. Bruen,* 142 S. Ct. 2111 (2022). In *Heller*, the Court explained that the individual right to keep and bear arms was not without limitations including, but not limited to, "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." *District of Columbia v. Heller*, 554 U.S. 570, 626-627 (2008). In *Bruen*, the Supreme Court held that restrictions on the Second Amendment must be consistent with the nation's historical tradition of firearm regulation. *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2129–30 (2022)

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

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

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

Response: I am not aware of any Supreme Court or Seventh Circuit decision wherein the right to own a firearm received less protection than other individual rights.

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

Response: I am not aware of any Supreme Court or Seventh Circuit decision wherein the right to own a firearm received less protection than the right to vote.

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

Response: Whether to prosecute and what charge to file or bring before a grand jury are decisions that generally rest in the prosecutor's discretion but it is not "unfettered." *Wayte v. United States*, 470 U.S. 598, 607 (1985); *United States. v. Batchelder*, 442 U.S. 114, 124 (1979). The decision to prosecute is subject to constitutional constraints and may not be "deliberately based upon an unjustifiable standard such as race, religion, or other arbitrary classification." *Id.*

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

Response: As a current trial court judge and district court nominee, it would be inappropriate to provide an opinion on a matter that may appear before me. If confirmed, I

will apply all binding Supreme Court and Seventh Circuit precedent to the specific facts of the case.

40. Does the President have the authority to abolish the death penalty?

Response: No. The President does not have the authority to invalidate a congressional statute such as the Federal Death Penalty Act, codified at 18 U.S.C. § 3591.

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

Response: In *Alabama Association of Realtors v. HHS*, the Supreme Court addressed the authority of the Centers for Disease Control and Prevention (CDC) to issue a nationwide moratorium on certain eviction proceedings under Section 361 of the Public Health Service Act. *Alabama Ass'n of Realtors v. Dep't of Health & Human Services*, 141 S. Ct. 2485, 2486 (2021). The lower court previously entered a stay of its order vacating the moratorium pending appellate review. After analyzing the four traditional stay factors, the Supreme Court vacated the stay rendering the lower court's judgment enforceable. *Id.* at 2488. The Court concluded there was a substantial likelihood of success on the merits of the claim that the CDC exceeded its authority under Section 361 and noted that while the "harm to the applicants has increased, the Government's interests have decreased" since entry of the order. *Id.* at 2489. The Supreme Court acknowledged the public's undisputed strong interest in combating COVID-19, and held "it is up to Congress, not the CDC, to decide whether the public interest merits further action here. *Id.* at 2490.

42. You currently serve as a judge on the Seventh Judicial Circuit of Illinois, where you hear domestic relations cases concerning parentage, dissolution, emancipation, and child support. According to the numbers you provided this committee, only three percent of your legal experience has dealt with criminal law. Further, you have not issued any significant opinions on federal or state constitutional issues and do not have substantial experience in federal law or complex constitutional cases. What professional experience do you have that qualifies you to serve as a federal judge?

Response: Question 13(a) on the Senate Judiciary Questionnaire requests the percentage of criminal cases that I have presided over that have gone to verdict or judgment. I did not interpret the question to request information regarding criminal pre-trial matters that I routinely preside over in my role as a state trial court judge. In that role, I have presided over several hundreds of criminal bond hearings, probable cause hearing and dozens of felony arraignment hearings including assisting my judicial colleagues in presiding over specialty courts involving felony cases and felony plea hearings. My judicial assignment also requires on-call warrant responsibilities and weekend bond hearings.

I preside over a high-volume docket that frequently involves adjudication of complex legal issues. All of my cases require me to demonstrate proper judicial temperament, patience, and case management skills. My experience in conducting hundreds of bench trials involving a wide variety of issues requires virtually daily application of the rules of evidence, rules of procedure and assessment of the credibility of witnesses. I have issued approximately 100 detailed opinions applying the specific facts of the case to statutory factors and applicable law. My judicial experience has prepared me for the federal bench.

Additionally, as an attorney with a general civil litigation practice prior to assuming the bench, I appeared frequently in federal court representing clients on a variety of claims, including, but not limited to, civil rights violations under Title VII, Family Medical Leave Act, Americans with Disabilities Act, legal malpractice and copyright infringement. My breadth of experience in litigation is best demonstrated by a review of the types of cases that I have presented to a jury in state and federal courts, argued on appeal, and presented to trial court judges in over 20 counties across the state of Illinois. In my 13 years of professional experience as a litigator and a state court judge, I have frequently been required to analyze legal issues in subject areas that I had not personally confronted beforehand. Based on that experience, I am confident in my ability to thoroughly research and quickly become prepared on any legal issue that may be presented to the court.

If I am fortunate enough to be confirmed, I will continue to utilize these skills and experience to decide cases in a fair and impartial manner.

Senator Josh Hawley
Questions for the Record

Colleen Lawless
Nominee, Central District of Illinois

1. **Then-Judge Ketanji Brown Jackson made a practice of refusing to apply several enhancements in the Sentencing Guidelines when sentencing child pornography offenders. Please explain whether you agree with each of the following Guidelines enhancements and whether, if you are confirmed, you intend to use them to increase the sentences imposed on child pornography offenders.**

   a. **The enhancement for material that involves a prepubescent minor or a minor who had not attained the age of 12 years**

      Response: I am not familiar with Justice Ketanji Brown Jackson's sentencing practices as a district judge. If confirmed, I will carefully consider the presentence report, any victim impact statements, sentencing memoranda submitted by the parties, properly calculated guideline range, the grounds for upward or downward departures provided in the policy statements, and the factors under 18 U.S.C. § 3553(a) to reach a fair and appropriate sentence on a case-by-case basis. *Rita v. United States*, 551 U.S. 338 (2007).

   b. **The enhancement for material that portrays sadistic or masochistic conduct or other depictions of violence**

      Response: I am not familiar with Justice Ketanji Brown Jackson's sentencing practices as a district judge. If confirmed, I will carefully consider the presentence report, any victim impact statements, sentencing memoranda submitted by the parties, properly calculated guideline range, the grounds for upward or downward departures provided in the policy statements, and the factors under 18 U.S.C. § 3553(a) to reach a fair and appropriate sentence on a case-by-case basis. *Rita v. United States*, 551 U.S. 338 (2007).

   c. **The enhancement for offenses involving the use of a computer**

      Response: I am not familiar with Justice Ketanji Brown Jackson's sentencing practices as a district judge. If confirmed, I will carefully consider the presentence report, any victim impact statements, sentencing memoranda submitted by the parties, properly calculated guideline range, the grounds for upward or downward departures provided in the policy statements, and the factors under 18 U.S.C. § 3553(a) to reach a fair and appropriate sentence on a case-by-case basis. *Rita v. United States*, 551 U.S. 338 (2007).

   d. **The enhancements for the number of images involved**

Response: I am not familiar with Justice Ketanji Brown Jackson's sentencing practices as a district judge. If confirmed, I will carefully consider the presentence report, any victim impact statements, sentencing memoranda submitted by the parties, properly calculated guideline range, the grounds for upward or downward departures provided in the policy statements, and the factors under 18 U.S.C. § 3553(a) to reach a fair and appropriate sentence on a case-by-case basis. *Rita v. United States*, 551 U.S. 338 (2007).

2. **Federal law currently has a higher penalty for distribution or receipt of child pornography than for possession. It's 5-20 years for receipt or distribution. It's 0-10 years for possession. The Commission has recommended that Congress align those penalties, and I have a bill to do so.**

    a. **Do you agree that the penalties should be aligned?**

    Response: As a current trial court judge and a district court nominee, it would be inappropriate to provide an opinion on a matter of policy.

    b. **If so, do you think the penalty for possession should be increased, receipt and distribution decreased, or a mix?**

    Response: As a current trial court judge and a district court nominee, it would be inappropriate to provide an opinion on a matter of policy.

    c. **If an offender before you is charged only with possession even though uncontested evidence shows the offender also committed the crime of receiving child pornography, will you aim to sentence the offender to between 5 and 10 years?**

    Response: If confirmed, I will carefully consider the presentence report, any victim impact statements, sentencing memoranda submitted by the parties, properly calculated guideline range, the grounds for upward or downward departures provided in the policy statements, and the factors under 18 U.S.C. § 3553(a) to reach a fair and appropriate sentence on a case-by-case basis. *Rita v. United States*, 551 U.S. 338 (2007).

3. **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?**

    Response: I am not familiar with the context in which Justice Marshall made the statement. However, a judge is required to apply binding precedent to the specific facts of the case without consideration of personal opinions, values, or facts outside of the record. If confirmed, I will uphold the Constitution of the United States and the rule of law in a fair and impartial manner by applying binding Supreme Court and Seventh Circuit precedent.

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

   Response: As current trial court judge and district court nominee, it would be inappropriate to opine as to whether a current or former Supreme Court Justice violated a judicial oath or ethical obligation.

4. **Do you believe that the Supreme Court's ruling in *Dobbs* v. *Jackson Women's Health Organization* is settled law?**

   Response: *Dobbs v. Jackson Women's Health Organization* is binding Supreme Court precedent that I will apply if I am confirmed as a district court judge.

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

   Response: In reliance on Supreme Court precedent, the Seventh Circuit has explained that "a federal court's ability to abstain from exercising federal jurisdiction 'is the exception, not the rule,' and can be justified only in exceptional circumstances." *Adkins v. VIM Recycling, Inc.,* 644 F.3d 483, 496–97 (7th Cir. 2011) (quoting *Ankenbrandt v. Richards*, 504 U.S. 689, 705 (1992)).

   Colorado River Doctrine:

   The *Colorado River* abstention doctrine permits federal courts to defer to a "concurrent state proceeding" as a matter of "wise judicial administration" when parallel state court and federal court lawsuits are pending between the same parties and "exceptional circumstances" justify abstention. *Adkins v. VIM Recycling, Inc.*, 644 F.3d 483, 497–98 (7th Cir. 2011) (citing *Colorado River Water Conservation District v. United States*, 424 U.S. 800, 818 (1976)). The court must determine whether the concurrent state and federal actions are actually parallel" and whether "exceptional circumstances" justify abstention. *Id.*

   Two suits are parallel for *Colorado River* purposes when "substantially the same parties are contemporaneously litigating substantially the same issues" and there is "substantial likelihood that the state litigation will dispose of all claims presented in the federal case." *Adkins v. VIM Recycling, Inc.*, 644 F.3d 483, 497–98 (7th Cir. 2011). In order to determine whether "exceptional circumstances" exist, the court must carefully balance the following non-exclusive factors: 1) whether the state has assumed jurisdiction over property; 2) the inconvenience of the federal forum; 3) the desirability of avoiding piecemeal litigation; 4)the order in which jurisdiction was obtained by the concurrent forums; 5) the source of governing law, state or federal; 6) the adequacy of state-court action to protect the federal plaintiff's rights; 7) the relative progress of state and federal proceedings; 8) the presence or absence of concurrent jurisdiction; 9) the availability of removal; and 10) the vexatious or contrived nature of the federal claim. *Id.* at 500–01 (7th Cir. 2011)

Burford Doctrine:

Under the *Burford* doctrine, federal courts may abstain when principles of federalism warrant deference to a state's regulatory regime. First, a federal court may choose to abstain when it is faced with "difficult questions of state law" that implicate significant state policies. *Adkins v. VIM Recycling, Inc.,* 644 F.3d 483, 504 (7th Cir. 2011) (citing *New Orleans Public Serv., Inc. v. Council of City of New Orleans,* 491 U.S. 350, 361 (1989)). Second, abstention also may be appropriate when concurrent federal jurisdiction would "be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern." *Id.* The *Burford* analysis requires the court to consider the following factors: (1) whether the suit is based on a cause of action which is exclusively federal; (2) whether difficult or unusual state laws are at issue; (3) whether there is a need for coherent state doctrine in the area; and (4) whether state procedures indicate a desire to create special state forums to adjudicate the issues presented. *Gen. Ry. Signal Co. v. Corcoran,* 921 F.2d 700, 708–09 (7th Cir. 1991).

Younger Doctrine:

The *Younger* doctrine reflects a concern that federal interference with certain types of important state proceedings is unwise and unnecessary in a system of dual sovereigns. *Mulholland v. Marion Cnty. Election Bd.,* 746 F.3d 811, 815 (7th Cir. 2014) (citing *Younger v. Harris*, 401 U.S. 37 (1971)). The *Younger* abstention doctrine applies when federal jurisdiction would intrude into three limited types of cases: 1) ongoing state criminal proceedings; 2) certain civil enforcement proceedings (judicial or administrative) akin to criminal prosecutions; and 3) civil proceedings "that implicate a State's interest in enforcing the orders and judgments of its courts." *Id. (*citing *Sprint Communications, Inc. v. Jacobs,* 134 S.Ct. 584, 588 (2013)). The abstention doctrine does not prevent federal courts from enjoining enforcement actions that involve "bad faith, harassment, or a patently invalid state statute." *Id*. at 818.

Rooker-Feldman Doctrine:

The *Rooker-Feldman* doctrine precludes federal courts from adjudicating "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp*., 544 U.S. 280, 284 (2005). Under *Rooker-Feldman*, the court must first consider whether a plaintiff's federal claims are "independent" or, instead, whether they "either 'directly' challenge a state court judgment or are 'inextricably intertwined with one.'" *Andrade v. City of Hammond, Indiana*, 9 F.4th 947, 950 (7th Cir. 2021). If they are "independent" claims, the *Rooker-Feldman* doctrine does not preclude federal courts from exercising jurisdiction over them. But if they "directly" challenge or are "inextricably intertwined" with a state-court judgment, then the court will determine whether the plaintiff had a reasonable opportunity to raise the issue in state court proceedings." *Id.*

Pullman Doctrine:

The *Pullman* doctrine applies when "the resolution of a federal constitutional question might be obviated if the state courts were given the opportunity to interpret ambiguous state law." *Wisconsin Right to Life State Political Action Comm. v. Barland*, 664 F.3d 139, 150 (7th Cir. 2011) (citing *Quackenbush v. Allstate Ins. Co.,* 517 U.S. 706, 716–17 (1996)). Under the *Pullman* doctrine, abstention is appropriate "only when (1) there is a substantial uncertainty as to the meaning of the state law and (2) there exists a reasonable probability that the state court's clarification of state law might obviate the need for a federal constitutional ruling." *Id*.

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

   Response: To the best of my recollection, I have not represented a client that opposed a party's religious liberty claim.

   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: Not applicable.

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

   Response: As a current trial court judge and district court nominee, I am required to follow the guidance of the Supreme Court and Seventh Circuit on this issue. In *Heller*, the Supreme Court analyzed the original public meaning of the Constitution's text in holding the Second Amendment conferred an individual right to keep and bear arms. *Dist. of Columbia v. Heller*, 554 U.S. 570, 595 (2008); *see also Bostock v. Clayton Cnty., Georgia,* 140 S. Ct. 1731, 1738 (2020) (stating "[t]his Court normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment").

8. **Do you consider legislative history when interpreting legal texts?**

   Response: I would consult the Supreme Court and Seventh Circuit authority and apply binding precedent on the interpretation of the specific statute or legal text in question. If there is no binding precedent on the issue, I would begin with the text of the statute, including any relevant statutory definitions, and also consider any applicable canons of construction. If the statute is clear, the analysis ends there. *Consumer Prod. Safety Comm'n v. GTE Sylvania,* Inc., 447 U.S. 102 (1980). If the text is ambiguous, I would look to persuasive precedent on analogous statutory interpretation and, in appropriate cases, consult legislative history to aid in determining congressional intent. *Bostock v. Clayton Cnty., Georgia*, 140 S. Ct. 1731, 1749 (2020) (finding "people are entitled to rely on the law as written, without fearing that courts might disregard its plain terms based on some extratextual consideration").

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: The Supreme Court has discussed the weight that should be given to certain types of legislative history. In *United States v. Price*, the Court reiterated the position that "the views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one" and "ordinarily even the contemporaneous remarks of a single legislator who sponsors a bill are not controlling in analyzing legislative history." *United States v. Price*, 361 U.S. 304, 313 (1960). The Court has also repeatedly stated that "the authoritative source for finding the Legislature's intent lies in the Committee Reports on the bill, which 'represen[t] the considered and collective understanding of those Congressmen involved in drafting and studying proposed legislation.'" *Garcia v. United States*, 469 U.S. 70, 76 (1984) (citing *Zuber v. Allen*, 396 U.S. 168, 186 (1969)).

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

Response: I am not aware of any Supreme Court decision consulting the laws of foreign nations when interpreting the provisions of the U.S. Constitution. If confirmed, I will apply binding Supreme Court and Seventh Circuit precedent on the issue of constitutional interpretation.

9. **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 prove a claim of execution protocol violates the Eighth Amendment, an inmate must demonstrate that the method of execution "cruelly superadds pain to the death sentence" by showing there was 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); *Glossip v. Gross*, 576 U.S. 863, 877 (2015); *Baze v. Rees*, 553 U.S. 35, 61 (2008). The Eighth Amendment does not come into play unless the risk of pain associated with the State's execution protocol is "substantial when compared to a known and available alternative." *Id*.

The Supreme Court has recognized that the prisoner may challenge the means of his execution pursuant to 42 U.S.C. § 1983 to determine whether the method complies with constitutional requirements. *Woods v. Buss*, 496 F.3d 620, 622–23 (7th Cir. 2007) (citing *Nelson v. Campbell*, 541 U.S. 637, 644 (2004)). The inmate must demonstrate both that there is an objectively serious deprivation and the deprivation was done with deliberate indifference. *Id.*

10. 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. The Supreme Court in *Glossip v. Gross*, held inmates are required to identify "an alternative that is 'feasible, readily implemented, and in fact significantly reduces a substantial risk of severe pain.'" *Glossip v. Gross*, 576 U.S. 863, 877 (2015) (quoting *Baze v. Rees*, 553 U.S. 35, 52 (2008)).

11. 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: I am not aware of any Supreme Court or Seventh Circuit decision recognizing a constitutional right to DNA analysis for habeas corpus petitioners.

12. 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.

13. 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: Under the Establishment Clause and Free Exercise Clause of the First Amendment, a government "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." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 532 (1993). If the government action is facially neutral and generally applicable, the law is subject to rational basis review. *Id.* at 531. If not, the law "must be justified by a compelling governmental interest and must be narrowly tailored to advance that interest." *Id.* at 531–32. "[A] regulation neutral on its face may, in its application, nonetheless offend the constitutional requirement for governmental neutrality if it unduly burdens the free exercise of religion," in which case there must be "a compelling governmental interest justif[ying] the burden." *Vision Church v. Vill. of Long Grove*, 468 F.3d 975, 996 (7th Cir. 2006) (quoting *Jimmy Swaggart Ministries v. Bd. of Equalization of California*, 493 U.S. 378, 384-385 (1990)

In determining whether a government action is truly neutral, the court must consider relevant factors such as "the historical background of the decision under challenge, the specific series of events leading to the enactment or official policy in question,

and the legislative or administrative history, including contemporaneous statements made by members of the decision-making body." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 540 (1993); *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n*, 138 S. Ct. 1719, 1731 (2018). A government action will fail the general applicability requirement if it "prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way," or if it provides "a mechanism for individualized exemptions." *Kennedy v. Bremerton Sch. Dist.,*142 S. Ct. 2407, 2422 (2022) (citing *Fulton v. City of Philadelphia, Pennsylvania*, 141 S. Ct. 1868, 1877 (2021)).

14. 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: The Supreme Court has recognized the protections under the Free Exercise Clause arise when a "law discriminates against some or all religious beliefs or regulates or prohibits conduct because it is undertaken for religious reasons." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah,* 508 U.S. 520, 532 (1993). The government 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." *Id.* at 534; *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n,* 138 S. Ct. 1719, 1729 (2018). Any laws that are not neutral and generally applicable must be narrowly tailored to achieve a compelling governmental interest. *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 67-68 (2020).

15. 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 Supreme Court has repeatedly held that an individual's sincerely held religious beliefs are protected by the First Amendment. In Frazee, the Supreme Court rejected the notion that one must be responding to the commands of a particular religious organization to classify as a sincerely held religious belief. *Frazee v. Illinois Dept. of Employment Sec.*, 489 U.S. 829, 834 (1989) (finding "[s]tates are clearly entitled to assure themselves that there is an ample predicate for invoking the Free Exercise Clause"). While the judiciary must determine whether an individual's religious belief is an "honest conviction," the belief in question does not need to be "acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." *Thomas v. Review Bd. of Indiana Employment Sec. Div.*, 450 U.S. 707, 714 (1981) (finding "[c]ourts are not arbiters of scriptural interpretation").

16. 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: In *District of Columbia v. Heller*, the Supreme Court established the Second Amendment protects an individual's right to keep and bear arms for traditionally lawful purposes such as self-defense *District of Columbia v. Heller*, 554 U.S. 570 (2008). In so holding, the Court found the District of Columbia's ban on handgun possession in the home and prohibition against rendering any lawful firearm in the home operable, violated the Second Amendment. *Id.* at 635. The Court specifically noted the individual right to keep and carry arms was not without limitations including, but not limited to, "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.

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.

17. **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: Justice Holmes disagreed with the majority opinion's broad interpretation of "liberty" under the Fourteenth Amendment in overturning a state law limiting the number of work hours for employees. Justice Holmes argued that the "Constitution is not intended to embody a particular economic theory, whether of paternalism and the organic relation of the citizen to the state or of *laissez faire*." *Lochner v. New York*, 198 U.S. 45, 75–76 (1905). Rather, "[i]t 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." *Id*.

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

Response: *Lochner v. New York* was overturned by several subsequent Supreme Court decisions and is no longer binding precedent. As a current trial court judge and district court nominee, it would be generally inappropriate to opine on the

accuracy of Supreme Court decisions. If confirmed, I will apply all binding precedent from the Supreme Court and the Seventh Circuit.

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

Response: No.

a. If so, what are they?

Response: Not applicable.

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

Response: Yes.

19. 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: As a current trial court judge and district court nominee, it would be inappropriate to provide an opinion on a matter that may appear before me. If confirmed, I will apply binding precedent from the Supreme Court and Seventh Circuit in determining whether particular facts constitute a monopoly. *See Eastman Kodak Co v. Image Technical Services, Inc.,* 504 U.S. 541, 481 (1992) (finding "nearly 100% of the parts market and 80% to 95% of the service market, with no readily available substitution" was sufficient to demonstrate monopoly power); *United States v. Grinnell Corp., 384 U.S. 563, 571* (1966) (finding 87% of the market constituted a monopoly).

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

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

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

Response: The Supreme Court held in *Erie R. Co. v. Tompkins*, that "[t]here is no federal general common law." *Erie R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938). In *Atherton v. F.D.I.C*., the Supreme Court reiterated that "cases in which judicial creation of a special federal rule would be justified ... are ... 'few and restricted.'" and "[w]hether latent federal power should be exercised to displace state law is primarily a decision for Congress," not the federal courts. *Atherton v. F.D.I.C*., 519 U.S. 213, 217-219 (1997) (citing *Wallis v. Pan American Petroleum Corp*., 384 U.S. 63, 68 (1966)). Instead, only limited areas exist in which federal judges may appropriately craft the rule of decision. *Sosa v. Alvarez-Machain*, 542 U.S. 692, 729 (2004).

21. 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: The Supreme Court has held that federal courts should defer to the state court's interpretation of state law. *See Wainwright v. Goode*, 464 U.S. 78, 84 (1983) ("the views of the state's highest court with respect to state law are binding on the federal courts").

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

Response: Please refer to my response to Question 21.

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

Response: The state constitutional provision may provide greater protections than the federal provision. If confirmed, I will apply binding precedent of the Supreme Court and Seventh Circuit as to whether deference is owed on state constitutional grounds.

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

Response: As a current trial court judge and district court nominee, it is generally inappropriate to comment on the accuracy of Supreme Court decisions. However, I am comfortable stating this case was correctly decided, because it is widely accepted and the issue of *de jure* segregation is unlikely to be relitigated. If confirmed, I will apply all binding Supreme Court and Seventh Circuit precedent.

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

Response: The Seventh Circuit recently discussed the historical context and Supreme Court authority supporting the legal authority for issuance of injunctive relief beyond the parties in court. *City of Chi. v. Barr*, 961 F.3d 882, 912-18 (7th Cir. 2020) (noting the Supreme Court's allowance of an injunction benefitting non-parties in *Trump v. Intern. Refugee Assistance Project*, 137 S. Ct. 2080 (2017)). I am not aware of any binding Supreme Court precedent to the contrary.

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

   Response: Federal Rule of Civil Procedure 65 controls the issuance of injunctive relief. "A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Adkins v. Nestle Purina PetCare Co*., 779 F.3d 481, 483 (7th Cir. 2015) (citing *Winter v. Natural Resources Defense Council, Inc.,* 555 U.S. 7, 20 (2008)). If confirmed, I will apply binding Supreme Court and the Seventh Circuit precedent.

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

   Response: As a current trial court judge and district court nominee, it would not be appropriate to provide an opinion on a matter that may appear before me. If confirmed, I would consider the specific facts of the case and apply binding Supreme Court and Seventh Circuit precedent.

24. 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 refer to my response to Question 23.

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

Response: Federalism is a principle embodied in our constitutional system and division of government whereby powers are delineated between the state and federal government. The Federal government received limited, enumerated powers under the Constitution while reserving all powers, not enumerated, to the states under the Tenth Amendment.

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

Response: Please refer to my response to Question 5.

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

Response: The remedy available to a plaintiff is dependent on the nature of the claim and their alleged injury. In general, a plaintiff will seek injunctive relief to address a future harm while damages are awarded to compensate a person for a past injury. *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2210 (2021).

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

Response: Under the Due Process Clause of the Fourteenth Amendment, no State shall "deprive any person of life, liberty, or property, without due process of law." The fundamental liberties protected by this Clause include most of the rights enumerated in the Bill of Rights. *See Duncan v. Louisiana*, 391 U.S. 145, 147–149 (1968). In addition, the Supreme Court held in *Washington v. Glucksberg*, that unenumerated rights can be recognized under the Due Process Clause of the Fourteenth Amendment if such rights are "deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed." *Washington v Glucksberg*, 521 U.S. 702, 720-21 (1997). In *Glucksberg*, the Supreme Court outlined a series of past decisions establishing fundamental unenumerated rights such as the right to marry; to have children; to direct the education and upbringing of one's children; to marital privacy; to use contraception; and to bodily integrity. *Id*. at 720 (internal quotation marks and citations omitted). The Supreme Court has recognized a series of additional fundamental unenumerated rights including, but not limited to, the right to interracial marriage, *Loving v. Virginia*, 388 U.S. 1 (1967); the right to engage in intimate sexual conduct, *Lawrence v. Texas*, 539 U.S. 558 (2003); and the right of same-sex couples to marry, *Obergefell v. Hodges*, 576 U.S. 644 (2015). If confirmed, I will apply binding precedent of the Supreme Court and Seventh Circuit regarding substantive due process.

29. 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 refer to my response to Question 13 and 14.

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

Response: Both the free exercise of religion and the freedom of worship are fundamental rights protected by the First Amendment. The Supreme Court has stated "where the Free Exercise Clause protects religious exercises, whether communicative or not, the Free Speech Clause provides overlapping protection for expressive religious activities*." Kennedy v. Bremerton Sch. Dist*., 142 S. Ct. 2407, 2421 (2022). The protections afforded under the Free Exercise Clause include the ability of those who hold religious beliefs of all kinds to live out their faiths in daily life through "the performance of (or abstention from) physical acts." *Id.* (quoting *Employment Div., Dept. of Human Resources of Ore. 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: Please refer to my response to Question 13 and 14.

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 refer to my response to Question 15.

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: As stated by the Supreme Court in *Holt v. Hobbs,* the Religious Freedom Restoration Act ("RFRA") was enacted to provide greater protection for religious exercise than is available under the First Amendment. *Holt v. Hobbs*, 574 U.S. 352, 357 (2015). RFRA "applies to all Federal law; and the implementation of that law, whether statutory or otherwise" but permits Congress to exclude statutes from RFFA's protection. 42 U.S.C. Section 2000bb-3(a); *see Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct. 2367 (2020).

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.

30. **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 am not familiar with the context in which Justice Scalia made this statement. However, I presume he is referencing a judge's duty to apply the law to the specific facts of the case without consideration of personal viewpoints or outside influence.

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

Response: To the best of my recollection, no.

a. **If yes, please provide appropriate citations.**

Response: Not applicable.

32. **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: To the best of my recollection, no.

33. **Do you believe America is a systemically racist country?**

    Research: The judiciary serves an essential role in the United States in upholding the integrity of the Constitution and rule of law by rendering fair and impartial decisions. As a state trial court judge, I ensure that every litigant who comes into my courtroom is treated fairly, respectfully, and impartially regardless of their race, gender, religion, or any other attribute. I have not conducted research on the issue of "systemic racism" to provide an informed opinion.

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

    Response: Yes.

35. **How did you handle the situation?**

    Response: I adhered to my oath and ethical obligations by zealously advocating on behalf of my client to reach an outcome that was in their best interest.

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

    Response: Yes.

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

    Response: I am unable to identify a specific Federalist Paper that has most shaped my views of the law.

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

    Response: As a current trial court judge and district court nominee, my personal opinion does not play a role in my judicial decision-making. If confirmed, I will apply the binding Supreme Court and Seventh Circuit precedent on this issue.

39. **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: Yes. I testified at a discovery deposition as a witness in a personal injury lawsuit and as an attorney at a hearing on requested attorney fees. I do not have a transcript or record of said testimony.

40. 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)?

Response: No.

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

Response: No.

c. Systemic racism?

Response: No.

d. Critical race theory?

Response: No.

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

a. Apple?

Response: Yes.

b. Amazon?

Response: Yes.

c. Google?

Response: I do not own any individual shares, but Google is currently included in mutual funds that I own.

d. Facebook?

Response: I do not own any individual shares, but Facebook is currently included in mutual funds that I own.

e. Twitter?

Response: No.

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

Response**:** In my role as a law clerk prior to admission to the bar, I drafted and edited various sections of briefs for partners at the firm but did not maintain a list of those cases. To the best of my recollection, I did not draft or edit a brief as an attorney that did not include my name on it when filed.

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

   Response: Please refer to my response to Question 42.

43. Have you ever confessed error to a court?

Response: To the best of my recollection, no.

a. **If so, please describe the circumstances.**

   Response: Not applicable.

44. 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: According to the oath administered at the confirmation hearing, nominees are required to provide truthful answers to questions posed by the Senate Judiciary Committee.

Questions from Senator Thom Tillis
for Colleen Rae Lawless
Nominee to be United States District Judge for the Central District of Illinois

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 generally refers to a judge interjecting personal viewpoints into the decision-making process or reaching a decision that is beyond the scope of the issue presented due to personal viewpoints. Judicial activism is inappropriate in both contexts.

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

   Response: 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: No.

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

   Response: Yes. As a current trial court judge and district court nominee, I am duty bound to uphold the Constitution of the United States and the rule of law in a fair and impartial manner by applying binding Supreme Court and Seventh Circuit precedent without consideration of my personal viewpoints or factors outside of the record.

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

   Response: No.

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

   Response: The Supreme Court has recognized that the Second and Fourteenth Amendments protect the right of an ordinary, law-abiding citizen to possess a handgun inside and outside of the home for self-defense. *District of Columbia v. Heller*, 554 U.S. 570 (2008); *McDonald v. Chicago*, 561 U.S. 742 (2010); *New York State Rifle and Pistol v. Bruen,* 142 S. Ct. 2111 (2022). In *Bruen*, the Supreme Court held that restrictions on the Second Amendment must be consistent with the nation's historical tradition of firearm regulation. *Id.* at 2129–30. If

confirmed, I will faithfully apply binding Supreme Court and Seventh Circuit precedent regarding Second Amendment protections.

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

   Response: If confirmed, I would apply Supreme Court and Seventh Circuit precedent in determining Second Amendment challenges and consider recent precedent on evaluation of constitutional rights during the COVID-19 pandemic. *See Tandon v. Newsom*, 141 S. Ct. 1294 (2021) (granting an injunction against enforcing COVID-19 restrictions on religious gatherings due to violations of the Free Exercise Clause); *Roman Catholic Diocese of Brooklyn v. Cuomo,* 141 S. Ct. 63, 66 (2020) (granting injunctive relief on the basis of Free Exercise violations).

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: If confirmed, I would follow the two-prong analysis adopted by the Supreme Court in evaluating a qualified immunity case. The analysis requires the trial court to determine whether the plaintiff has alleged facts or demonstrated a violation of a constitution right and whether the right at issue was "clearly established" at the time of the defendant's alleged conduct. *Pearson v. Callahan*, 555 U.S. 223, 231 (2009). In *Pearson*, the Supreme Court modified the qualified immunity standard to allow judges the discretion to determine which prong of the analysis should be addressed first in light of the circumstances of the particular case at hand." *Id.* If confirmed, I would apply binding Supreme Court and Seventh 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: As a current trial court judge and a district court nominee, it would be inappropriate to comment on policy decisions. If confirmed, I would apply binding Supreme Court and Seventh Circuit precedent on this issue.

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

    Response: As a current trial court judge and a district court nominee, it would be inappropriate to comment on policy decisions. If confirmed, I would apply binding Supreme Court and Seventh Circuit precedent on this issue.

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

    Response: The Supreme Court has established a two-step framework for "distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts." *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 573 U.S. 208, 217–18 (2014) (citing *Mayo Collaborative Services v. Prometheus Laboratories, Inc*., 132 S. Ct. 1289 (2012)). The first step is to determine whether the claim at issue is directed to a patent-ineligible concept. *Id*. at 218 (finding the concept of intermediated settlement falls into the patent-ineligible category of abstract ideas). If the claim is directed to a patent-ineligible concept, the court must then evaluate, "the elements of each claim both individually and 'as an ordered combination' to determine whether the additional elements 'transform the nature of the claim' into a patent-eligible application." *Id*. at 217.

    As a current trial court judge and district court nominee, it would be generally inappropriate to opine on the accuracy of binding Supreme Court precedent. If confirmed, I would evaluate the facts of the specific case and apply the binding Supreme Court and Seventh Circuit precedent.

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

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

       Response: As a current trial court judge and district court nominee, it would be inappropriate to comment on a matter that may appear before me. If confirmed, I would evaluate the facts of the specific case and apply the binding precedent established by the Supreme Court and the Seventh Circuit.

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

Response: As a current trial court judge and district court nominee, it would be inappropriate to comment on a matter that may appear before me. If confirmed, I would evaluate the facts of the specific case and apply the binding precedent established by the Supreme Court and the Seventh Circuit.

c. ***HumanGenetics* Company wants to patent a human gene or human gene fragment as it exists in the human body. Should that be patent eligible? What if *HumanGenetics* Company wants to patent a human gene or fragment that contains sequence alterations provided by an engineering process initiated by humans that do not otherwise exist in nature? What if the engineered alterations were only at the end of the human gene or fragment and merely removed one or more contiguous elements?**

   Response: As a current trial court judge and district court nominee, it would be inappropriate to comment on a matter that may appear before me. If confirmed, I would evaluate the facts of the specific case and apply the binding precedent established by the Supreme Court and the Seventh Circuit.

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

   Response: As a current trial court judge and district court nominee, it would be inappropriate to comment on a matter that may appear before me. If confirmed, I would evaluate the facts of the specific case and apply the binding precedent established by the Supreme Court and the Seventh Circuit.

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

   Response: As a current trial court judge and district court nominee, it would be inappropriate to comment on a matter that may appear before me. If confirmed, I would evaluate the facts of the specific case and apply the binding precedent established by the Supreme Court and the Seventh Circuit.

f. **A business methods company, *FinancialServices Troll,* specializes in taking conventional legal transaction methods or systems and implementing them through a computer process or artificial intelligence. Should such implementations be patent eligible? What if the implemented method actually**

improves the expected result by, for example, making the methods faster, but doesn't improve the functioning of the computer itself? If the computer or artificial intelligence implemented system does actually improve the expected result, what if it doesn't have any other meaningful limitations?

Response: As a current trial court judge and district court nominee, it would be inappropriate to comment on a matter that may appear before me. If confirmed, I would evaluate the facts of the specific case and apply the binding precedent established by the Supreme Court and the Seventh Circuit.

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

Response: As a current trial court judge and district court nominee, it would be inappropriate to comment on a matter that may appear before me. If confirmed, I would evaluate the facts of the specific case and apply the binding precedent established by the Supreme Court and the Seventh Circuit.

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

Response: As a current trial court judge and district court nominee, it would be inappropriate to comment on a matter that may appear before me. If confirmed, I would evaluate the facts of the specific case and apply the binding precedent established by the Supreme Court and the Seventh Circuit.

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

Response: As a current trial court judge and district court nominee, it would be inappropriate to comment on a matter that may appear before me. If confirmed, I would evaluate the facts of the specific case and apply the binding precedent established by the Supreme Court and the Seventh Circuit.

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

   Response: As a current trial court judge and district court nominee, it would be inappropriate to comment on a matter that may appear before me. If confirmed, I would evaluate the facts of the specific case and apply the binding precedent established by the Supreme Court and the Seventh Circuit.

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

    Response: As a current trial court judge and district court nominee, it would be inappropriate to opine or evaluate binding precedent of higher courts. If confirmed, I would evaluate the facts of the specific case and apply all binding Supreme Court and Seventh Circuit precedent.

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

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

       Response: I served as local counsel for a plaintiff alleging copyright infringement, unfair competition under the United States Trademark Act, and violation of the Digital Millennium Copyright Act arising from the defendants' manufacture and sale of the Canary Clip.

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

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

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

       Response: Over the past thirteen years as a litigation attorney and trial court judge, to the best of my recollection, I have not had the opportunity to handle any

matters involving intermediary liability for online service providers that host unlawful content posted by users.

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: Please see my response to Question 15(a) regarding my experience with intellectual property issues. Over the past thirteen years as a litigation attorney and trial court judge, to the best of my recollection, I have not had the opportunity to handle any matters involving First Amendment or free speech issues.

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

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

Response: If confirmed, I would be obligated to apply Supreme Court and Seventh Circuit precedent on the interpretation of the statutory provision in question. If there is no binding precedent on the specific provision, I would begin with the text of the statute, including any relevant statutory definitions, and also consider any applicable canons of construction. If the statute is clear, the analysis ends there. *Consumer Prod. Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102 (1980). If the text is ambiguous, I would look to persuasive precedent on analogous statutory interpretation and, in appropriate cases, consult legislative history to aid in determining congressional intent. *Bostock v. Clayton Cnty., Georgia*, 140 S. Ct. 1731, 1749 (2020) (finding "people are entitled to rely on the law as written, without fearing that courts might disregard its plain terms based on some extratextual consideration").

The Supreme Court has discussed the weight that should be given to certain types of legislative history. In *United States v. Price*, the Court reiterated the position that "the views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one" and "ordinarily even the contemporaneous remarks of a single legislator who sponsors a bill are not controlling in analyzing legislative history."

United States v. Price, 361 U.S. 304, 313 (1960). The Court has repeatedly stated that "the authoritative source for finding the Legislature's intent lies in the Committee Reports on the bill, which 'represen[t] the considered and collective understanding of those Congressmen involved in drafting and studying proposed legislation.'" *Garcia v. United States*, 469 U.S. 70, 76 (1984) (citing *Zuber v. Allen*, 396 U.S. 168, 186 (1969)).

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**:** I am not familiar with binding Supreme Court or Seventh Circuit precedent on the deference that should be provided to the U.S. Copyright Office. An expert agency's advice and analysis may be entitled to *Skidmore* deference, but only to the extent that they are persuasive. *See Skidmore v. Swift*, 323 U.S. 134 (1944); *Christensen v. Harris Cty*., 529 U.S. 576, 587 (2000). "The weight of such a judgment in a particular case will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control." *Gonzales v. Oregon*, 546 U.S. 243, 268 (2006).

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

   Response: As a current trial court judge and district court nominee, it would be inappropriate to comment on a matter that may appear before me. If confirmed, I would apply Supreme Court and Seventh Circuit precedent to issues of copyright infringement.

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

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

       Response: If confirmed, I am obligated to interpret the Digital Millennium Copyright Act according to the language of the statute and apply any binding precedent to the specific facts of the case. Whether the DMCA requires modification is a policy decision for the legislative branch to consider.

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, I am obligated to interpret the Digital Millennium Copyright Act according to the language of the statute and apply any binding precedent to the specific facts of the case.

18. **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 encountered "judge shopping" or "forum shopping" as referenced in this question. If confirmed, I will uphold the Constitution and laws of the United States through fair and impartial application of the law on a case-by-case basis.

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

       Response: District Court judges have an obligation to uphold the Constitution and laws of the United States through fair and impartial application of the law on a case-by-case basis.

    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: I am not familiar with the judicial practice of "forum selling" as referenced in the question. A judge is required to determine each case based upon the application of binding precedent to the specific facts presented.

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

       Response: I commit to not engage in any type of behavior intended to attract a particular type of case or litigant.

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

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

       Response: The appropriate circuit court of appeals is the forum in which this matter should be addressed. If confirmed, I will faithfully apply binding precedent of the Supreme Court and Seventh Circuit.

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

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

20. **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: I have not encountered or conducted research on the concentration of litigation in particular judicial districts to provide an informed opinion on whether it undermines the perception of fairness and evenhanded administration of justice. Judicial adherence to upholding the Constitution and the rule of law through the fair and impartial application of binding precedent to the specific facts of each case is the best way to demonstrate evenhanded administration of justice.

    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: I have not encountered or conducted research on the concentration of litigation in particular judicial districts to form an opinion on this matter. Furthermore, as a current trial court judge and district court nominee, it would not be appropriate to provide an opinion on a matter of policy.

    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?**

       Response: As a current trial court judge and district court nominee, it would not be appropriate to advocate on an issue of policy.

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

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

       Response: As a current trial court judge, I have not been reversed by an appellate court. If confirmed, I will continue to uphold the Constitution of the United States and the rule of law in a fair and impartial manner by applying Supreme Court and Seventh Circuit precedent based solely on the facts presented. As a result, I hope that I would never be reversed on mandamus by a court of appeals.

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

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