Senator Chuck Grassley, Ranking Member
Questions for the Record
Nancy L. Maldonado
Nominee to be United States District Judge for the Northern District of Illinois

1. **Please describe your understanding of the scope of the Second Amendment right to bear arms, citing any applicable Supreme Court and Seventh Circuit precedent.**

   Response: *District of Columbia v. Heller*, 554 U.S. 570 (2008) established the individual right to keep and bear arms under the Second Amendment. The Second Amendment was made applicable to the states in *McDonald v. City of Chicago*, 561 U.S. 742 (2010). The Seventh Circuit employs a two-part test in reviewing Second Amendment claims. *Wilson v. Cook County*, 937 F.3d 1028, 1032 (7th Cir. 2019). The threshold inquiry is whether the restricted activity falls "outside the scope of the Second Amendment right as it was understood at the relevant historical moment." *Id*. (quoting *Ezell v. City of Chi*., 651 F.3d 684, 702-03 (7th Cir. 2011)). If yes, the inquiry stops. If no, the court must review the government's justification for restricting the right with the rigor of review depending on "how close the law comes to the core of the Second Amendment right and the severity of the law's burden on the right. [A] severe burden on the core Second Amendment right of armed self-defense will require an extremely strong public-interest justification and a close fit between the government's means and its end." *Id*. (citations and quotations omitted).

2. **Under current Supreme Court precedent, can the federal government ban the possession of semi-automatic rifles without violating the Second Amendment?**

   Response: As a judicial nominee, it would be inappropriate for me to opine on a hypothetical. I would apply Supreme Court and Seventh Circuit precedent on any weapons regulations that would come before me. Please see my answer to Question 1.

3. **You have served on the Board of Directors of the Chicago Lawyers' Committee for Civil Rights. In a 2020 Committee report titled *Until Victory is Won*, the Committee describes its support for "#CopsOutCPS," a movement that seeks to "end law enforcement presence in Chicago Public Schools and other public-school districts." Do you agree with the Committee's efforts to end law enforcement presence in public schools? If so, why?**

   Response: I was not involved in drafting or approving the report cited. Decisions regarding whether law enforcement should have a presence in any particular school are best left to school administrators, parents and policymakers. I have served on the Illinois State Police Merit Board for nearly three years, whose mission is "to remove political influence and provide a fair and equitable process for the selection of Illinois State Trooper candidates and the promotion and discipline of Illinois State Police officers." I have respect for the role of law enforcement.

I joined the Board of Directors of the Chicago Lawyers' Committee for Civil Rights, a non-partisan Section 501(c)(3) nonprofit organization, because of their important work to ensure that all Chicagoans have equal justice under the law. In my role as a Board member, I have focused on fundraising, finance, and board governance. I have not played a role in approving specific cases for litigation or in approving any reports or press releases, which are both matters internal to the management of the organization, not the Board.

4. **The Committee's 2016 Annual Report states that the Trump Administration's "policy agenda immediately became clear" after the 2016 presidential election, adding that this agenda was "one that threatens to roll back hard fought civil rights gains in defiance of Constitutional protections that have long shaped our democracy." The report also states that the "'Othering' of so many individuals and communities" "is not the America in which we live." Do you agree with the Committee that the Trump Administration's agenda was to "other" individuals and communities and "roll back hard fought civil rights gains"?**

   Response: As a judicial nominee, it would be inappropriate for me to opine on this political rhetoric, which I did not draft or approve. I joined the Board of Directors of the Chicago Lawyers' Committee for Civil Rights because of their important work to ensure that all Chicagoans have equal justice under the law. In my role as a Board member, I have focused on fundraising, finance, and board governance. I have not played a role in approving specific cases for litigation or in approving any reports or press releases, which are both matters internal to the management of the organization, not the Board.

5. **As a partner at your law firm, you approved a June 2020 statement that condemned the death of George Floyd, Breonna Taylor, and other victims. Your statement "further condemned the words and actions of President Trump and others that have fomented division, violence, and animus in our country." How did President Trump contribute to the death of George Floyd, Breonna Taylor, or other victims?**

   Response: While I did not draft the June 2020 statement, I take responsibility for approving its publication on my firm's website. I did not understand the statement to be blaming any individual for the deaths of the victims. The statement was published during a time when there was an outcry – locally, nationally, and internationally – following the murder of George Floyd. I understood the drafter intended to make the point that the words of leadership matter. I take this concept very seriously and should I be confirmed, I will always aim to choose my words very carefully and precisely.

6. **In 2017, you signed a letter opposing the nomination of Senator Jeff Sessions to serve as Attorney General. The letter suggested that the senator's career "demonstrates hostility towards the principles underlying federal civil rights laws." The letter also questioned Senator Sessions' commitment to prosecuting hate crimes. In light of these statements and your comments about President Trump, how can conservatives who may appear before you be sure that you will decide their cases fairly and impartially?**

Response: In my nearly 20 years litigating, I have represented clients in a wide variety of cases without regard to their political views. I can assure the Committee that should I be confirmed, I will treat all litigants before me fairly without regard to political affiliation.

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

   Response: In *Washington v. Glucksberg*, 521 U.S. 702 (1997), the Supreme Court held that the due process clauses of the Fifth and Fourteenth Amendments protect "fundamental rights and liberties, which are, objectively, deeply rooted in this Nation's history and tradition," and "implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed[.]" *Id*. at 721 (internal quotations omitted).

8. **Have you ever tried a criminal case? If not, how will your relative lack of experience in criminal law affect your ability to serve as an effective federal district judge?**

   Response: In the nearly 21 years I have been a member of the bar, I have worked, first as a law clerk and then as a litigator, on a wide variety of cases from employment, civil rights, fraud, to constitutional issues on behalf of a broad range of clients, both plaintiff and defendant. This strong base of civil experience, which includes significant motion practice (dispositive and otherwise) and trial experience, will enable me to devote more of my time getting up to speed on the criminal side of my docket, should I be confirmed. While I have not tried a criminal case, during my two-year federal district court clerkship, I observed and assisted with criminal proceedings at all stages, including drafting opinions on motions to suppress evidence. Should I be confirmed, I will delve into criminal law the way I have delved into new areas of the law – with extensive research, consulting with colleagues, and diligence.

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

   Response: I understand the original intent of the law to refer to the intent of those who enacted the law, such as the framers in the context of our Constitution. Original public meaning refers to the ordinary meaning of words at the time a law was enacted. *See, e.g.*, *District of Columbia v. Heller*, 554 U.S. 570, 576-77 (2008) ("Normal meaning…excludes secret or technical meanings that would not have been known to ordinary citizens in the founding generation.").

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

Response: Should I be confirmed, I would follow all Supreme Court and Seventh Circuit precedent in interpreting the law, including any canons of statutory construction.

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

Response: Since the Supreme Court in *Everson v. Bd. of Educ*., 330 U.S. 1 (1947) held that the Establishment Clause applies to the states, there have been a large volume of cases litigated in federal courts, involving, for example aid to religious schools, school prayer, and religious displays in public spaces. I have not had the opportunity to litigate an Establishment Clause case in my 21 years of practice, but should I be confirmed and presented with one, I would apply Supreme Court and Seventh Circuit precedent to the specific facts presented before me. *See, e.g*., *Town of Greece v. Galloway*, 134 S. Ct. 1811 (2014) (prayer before town meeting does not violate the First Amendment); *Van Orden v. Perry*, 545 U.S. 677 (2005) (upholding display of Ten Commandments with historical meaning and additional secular message); *McCreary Cty. v. ACLU of Kentucky*, 545 U.S. 844 (2005) (striking down display of Ten Commandments not supported by any secular purpose).

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

Response: In interpreting the Second Amendment in *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court stated that "nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons…." *Id*. at 626. If confirmed and a case came before me presenting the question of whether felon dispossession statutes violated the Second Amendment or whether non-violent felons should be treated differently for the purposes of such a statute, I would carefully research whether the Supreme Court or Seventh Circuit had additional guidance to offer.

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

Response: My work with a gun control group has been limited to representing the Brady Center to Prevent Gun Violence as local counsel in filing an *amicus* brief in support of an assault weapons ban.

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

Response: Federal Rule of Civil Procedure 65 governs injunctions. An "injunction is a drastic and extraordinary remedy, which should not be granted as a matter of course." *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165 (2010). A nationwide injunction is permissible if needed to provide complete relief to the

plaintiffs. *Callano v. Yamasaki*, 442 U.S. 682, 702 (1979). *See also City of Chi. v. Barr*, 961 F.3d 882, 916-17 (7th Cir. 2020).

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

    Response: Yes, the Supreme Court held so in *Pierce v. Soc. of Sisters*, 268 U.S. 510 (1925).

15. **How many False Claims Act cases have you litigated? Please list them.**

    Response: I have been counsel of record in at least one federal False Claims Act case and one state Illinois False Claims Act case. *United States ex rel. Yannacopoulos v. Gen. Dynamics*, No. 03-C-3012 (N.D. Ill.) Gettleman, Denlow, JJ.), No. 09-3037 (7th Cir.) (Bauer, Sykes, Hamilton JJ.); *Suppressed v. Suppressed*, No. 07 L 6725 (Cir.Ct. Cook Cty) (resolved under seal).

    I have also assisted colleagues with numerous other FCA cases involving health care fraud and investigated potential FCA cases in the medical care, pharmaceutical, and defense industries.

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

    Response: The Seventh Circuit recently articulated its fact-specific materiality standard in *U.S. ex rel. Prose v. Molina Healthcare of Ill*., 17 F.4th 732, 742-43 (7th Cir. 2021) (citing *Universal Health Servs., Inc. v. U.S. ex rel. Escobar*, 597 U.S. 176, 136 S. Ct. 1989 (2016)). The misrepresentation must have "significantly affected" the government's decision to pay the false claim. Specifically, *Prose* instructs that:

    > A misrepresentation is not material "merely because the Government designates compliance with a particular statutory, regulatory, or contractual requirement as a condition of payment." *Id.* at 2003. Such a stipulation is "relevant, but not automatically dispositive." *Id.* But materiality requires more: typically, proof either that (1) a reasonable person would view the condition as important to a "choice of action in the transaction" or (2) the defendant knew or had reason to know that the recipient of the representation attaches importance to that condition. *Id.* at 2002–03. Should the government decide to pay despite knowing of the party's noncompliance, that would be "very strong evidence" (though not dispositive) that the condition is not material. *Id.* In short, facts matter. The complaint must include specific allegations that show that the omission in context significantly affected the government's actions.

    Id. at 742-743,

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

a. **Was *Brown v. Board of Education* correctly decided?**
b. **Was *Loving v. Virginia* correctly decided?**
c. **Was *Griswold v. Connecticut* correctly decided?**
d. **Was *Roe v. Wade* correctly decided?**
e. **Was *Planned Parenthood v. Casey* correctly decided?**
f. **Was *Gonzales v. Carhart* correctly decided?**
g. **Was *District of Columbia v. Heller* correctly decided?**
h. **Was *McDonald v. City of Chicago* correctly decided?**
i. **Was *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* correctly decided?**

Response: Should I be confirmed, I will follow all the precedent of the Supreme Court, including the precedent listed in (a)-(i); as a district court judge, I would be duty-bound to follow precedent and my personal opinions on the correctness (or not) of the Supreme Court's reasoning is not relevant. Moreover, Canon 3 of the Code of Conduct for United States Judges requires that I refrain from any public comment on issues that might come before me, and given the right to abortion, the scope of the Second Amendment, and the scope of the ministerial exception are currently being litigated in our courts, it would be highly inappropriate for me to offer my opinions. That being said, following the lead of other nominees, it is unlikely that laws providing for racial segregation and prohibiting inter-racial marriage will come before me, such that I am comfortable stating that *Brown v. Board of Education* and *Loving v. Virginia* were correctly decided.

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

Response: On October 25, 2021, I submitted an application to the Judicial Screening Committee established by Senators Richard Durbin and Tammy Duckworth for a position on the United States District Court for the Northern District of Illinois. On November 13, 2021, I interviewed with the Committee. On November 30, 2021, I interviewed with Senator Duckworth. On December 1, 2021, I interviewed with Senator Durbin. On December 15, 2021, the Senators' staff informed me that my name would be sent to the White House for further consideration. On December 20, 2021, I interviewed with attorneys from the White House Counsel's Office; shortly thereafter, I learned that I had been selected for vetting as a potential nominee. On April 13, 2022, the President announced his intent to nominate me, and on April 25, 2022, my nomination was submitted to the Senate.

19. **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 have not spoken with anyone from the Committee for a Fair Judiciary. I spoke with persons associated with the Raben Group about the endorsement of the Hispanic National Bar Association.

20. **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 have spoken to Christopher Kang of Demand Justice on a couple occasions about the judicial nominations process.

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

    Response: No.

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

    Response: No.

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

    Response: No.

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

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

       Response: No.

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

       Response: No.

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

Response: I have spoken to Christopher Kang on a couple occasions about the judicial nominations process.

25. **The Alliance for Justice is a "national association of over 120 organizations, representing a broad array of groups committed to progressive values and the creation of an equitable, just, and free society."**
    a. **Has anyone associated with Alliance for Justice requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

    Response: No.

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

    Response: No.

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

    Response: I was in contact with former Alliance for Justice president Nan Aron on one occasion.

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

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

    Response: No.

    b. **Are you currently in contact with anyone associated with Arabella Advisors? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, the Hopewell**

Fund, the Windward Fund, or any other such Arabella dark-money fund that is still shrouded.

Response: No.

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

Response: No.

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

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

Response: No.

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

Response: No.

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

Response: No.

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

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

Response: No.

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

Response: No.

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

Response: No.

29. **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, which purports to "combat[] damaging right-wing court capture to restore progressive federal courts" and to "counter illegitimate right-wing dominated courts."**

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?**

Response: No.

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?**

Response: No.

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: I have spoken to Robert Raben and perhaps another staff member of the Raben Group on a couple of occasions regarding an endorsement from the Hispanic National Bar Association.

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

Response: Yes.

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

Response: I received the questions from the Office of Legal Policy (OLP) on May 18, 2022. I reviewed each question, researched and reviewed my files as necessary, and drafted responses. On May 20, 2022, I submitted draft answers to OLP, which provided feedback that I considered. I finalized and submitted my responses on May 23, 2022.

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

Questions for the Record for Nancy Maldonado, Nominee for the Northern District of Illinois

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: Congress has said as much in enacting legislation prohibiting race discrimination in, for example, public accommodations, employment, and housing.

2. **You have served on the Board of Directors for the Chicago Lawyers' Committee for Civil Rights, a group that actively opposes conservative policies and personnel. Do you personally believe in their vision to "root out and dismantle deeply entrenched systems of discrimination, racism, and economic oppression"?**

Response: I have served on the Board of Directors of the Chicago Lawyers' Committee for Civil Rights, a non-partisan Section 501(c)(3) nonprofit organization, that seeks to ensure that all Chicagoans have equal justice under the law. The language quoted is from their website, and is language that I did not draft or approve. In my role as a Board member, I have focused on fundraising, finance, and board governance. I have not played a role in approving specific cases for litigation or in approving any reports or press releases, which are both matters internal to the management of the organization, not the Board. Should I be confirmed, I will approach any cases alleging discrimination applying precedent to the particular facts before me and I will treat all litigants before me fairly, respectfully and without bias.

3. **You signed a letter on January 9, 2017 opposing of Jeff Sessions to serve as Attorney General. The letter suggested that then-Senator Sessions' "political career demonstrates hostility towards the principles underlying federal civil rights laws." The letter also questioned whether Senator Sessions would bring a commitment to prosecuting hate crimes to the Justice Department. What about his career made it hostile towards the principles the letter referred to?**

Response: The letter opposing then-Senator Sessions' nomination to become Attorney General contained several examples of public statements made by then-Senator Sessions and his voting record on various pieces of legislation, including civil rights legislation, that were at odds with the advocacy position of the Lawyers' Committee for Civil Rights Under Law. Should I be confirmed, I will approach any cases alleging civil rights violations applying precedent to the particular facts before me.

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

Response: To my knowledge, Critical Race Theory is a legal academic theory and is not taught in K-12 educational settings. The decision on whether a particular curriculum is appropriate for any educational setting is best left to administrators, parents, and policymakers.

5. **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: My judicial philosophy would be to fairly and impartially apply the law, including all precedent of the Supreme Court and Seventh Circuit, to the record before me. Should I be confirmed, I would aim to be transparent and consistent in my application of the law, mindful of my oath to "administer justice without respect to persons, and do equal right to the poor and to the rich." 28 U.S.C. §453. I have not had an opportunity to perform an in-depth study of the jurisprudence of the above-named justices or opine on any of their philosophies. Should I be confirmed, I would be duty-bound to follow all the precedent of the United States Supreme Court.

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

Response: Black's Law Dictionary defines "originalism" as "[t]he doctrine that 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 would follow binding Supreme Court and Seventh Circuit precedent regarding the meaning of any specific constitutional provision as well as the method of constitutional interpretation they used. For that reason, I do not ascribe to any particular label. For example, in interpreting the Second Amendment, I would follow the Supreme Court's guidance in *District of Columbia v. Heller*, 554 U.S. 570, 576-77 (2008) to look at the "normal and ordinary" meaning of words and not "secret or technical meanings that would not have been known to ordinary citizens in the founding generation." *Id*.

7. **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 "[t]he doctrine that the Constitution should be interpreted and applied in accordance with changing circumstances and, in particular, with changes in social values." *Living Constitutionalism*, Black's Law Dictionary (11th ed. 2019). I would follow binding Supreme Court and Seventh Circuit precedent regarding the meaning of any specific constitutional provision as well as the method of constitutional interpretation they used. For that reason, I do not ascribe to any particular label.

8. **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: Yes.

9. **How should federal district courts consider Supreme Court precedent when deciding cases?**

Response: Federal district courts are duty-bound to follow Supreme Court precedent when deciding cases.

10. **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: In interpreting the Second Amendment, the Supreme Court in *District of Columbia v. Heller*, 554 U.S. 570, 576-77 (2008), looked at the "normal and ordinary" meaning of words and not "secret or technical meanings that would not have been known to ordinary citizens in the *founding generation*." *Id.* (emphasis added). Similarly, in interpreting 42 U.S.C. 1981's bar on race discrimination in the making and enforcing of contracts, the Supreme Court looked at the 19th-century understanding of race in holding that the statute protected "identifiable classes of persons who are subjected to intentional discrimination solely because of their ancestry or ethnic characteristics." *St. Francis Coll. v. Al-Khazraji*, 581 U.S. 604, 613 (1987). Should I be confirmed, I would be duty-bound to follow the precedent of the United States Supreme Court and the Seventh Circuit Court of Appeals in determining the meaning of the Constitution or a statute.

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

Response: The Constitution can only be amended through the Article V amendment process. Should I be confirmed, I would be duty-bound to follow the precedent of the United States Supreme Court and the Seventh Circuit Court of Appeals.

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

Response: The Religion Clauses of the First Amendment, as interpreted most recently by *Tandon v. Newsom*, 141 S. Ct. 1294 (2021) and *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049 (2020) limit government imposition on private institutions. *See also Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n*, 138 S. Ct. 1719, 1729-31 (2018) (application of public accommodations law failed strict scrutiny in light of Commissioners' hostility to baker's religious belief). *Fulton v. City of Phila*., 141 S. Ct. 1868, 1877 (2021) (non-discrimination clause was not neutral or generally applicable and failed strict scrutiny where the Commissioner was permitted to make exceptions at his discretion). In addition, federal government actions are governed by the Religious Freedom Restoration Act. Further, the Religious Land Use and Institutionalized Persons Act limits government action in those two spheres.

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

Response: No.

14. **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: In *Roman Catholic Diocese of Brooklyn v. Cuomo,* 141 S. Ct. 63 (2020), the Supreme Court held that the petitioner religious entities were entitled to a preliminary injunction because: (1) they were likely to prevail on their First Amendment claims because the regulations singled out houses of worship (*i.e*., not neutral) and failed to satisfy strict scrutiny; (2) "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury," *id*. at 66-67 (*citing Elrod v. Burns*, 427 U.S. 347, 373 (1976)); and (3) enjoining the enforcement of the executive order would not harm the public interest because the State did not claim that attendance at petitioners' services spread disease or that lesser restrictions would negatively impact public health. *Id*. at 68.

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

Response: In *Tandon v. Newsom*, 141 S. Ct. 1294 (2021), the Supreme Court held that the Ninth Circuit erred in denying plaintiff an injunction against restrictions on at-home religious gatherings. The regulations in that instance were not neutral because they treated comparable secular activity (*e.g*., hair salons, movie theaters) more favorably than religious exercise and therefore failed strict scrutiny review.

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

Response: Yes.

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

Response: In *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2019), the Supreme Court held that the Colorado Civil Rights Commission's cease and desist order against a bakery that refused to make a wedding cake for a same-sex couple violated the Free Exercise Clause's requirement of religious neutrality in light of the Commission's "clear and impermissible hostility toward sincere religious beliefs that motivated [the baker's] objection." *Id*. at 1729.

18. **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: Supreme Court precedent instructs that sincerely-held religious beliefs are protected irrespective of whether they derive from a particular religious organization or are in agreement with the mainstream of their religious membership. *Frazee v. Ill. Dep't of Emp. Sec*., 489 U.S. 829, 833-34 (1989).

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

Response: Only sincerely-held religious but not secular beliefs are protected by the Free Exercise Clause. In *Frazee v. Ill. Dep't of Emp. Sec*., 489 U.S. 829, 833 (1989), the Supreme Court acknowledged that it did not "underestimate the difficulty of distinguishing between religious and secular convictions and in

determining whether a professed belief is sincerely held." *Id*. The Seventh Circuit has further clarified (in the prison context) that "although sincerity rather than orthodoxy is the touchstone, a prison still is entitled to give *some* consideration to an organization's tenets. For the more a given person's professed beliefs differ from the orthodox beliefs of his faith, the less likely they are to be sincerely held." *Vinning-El v. Evans*, 657 F.3d 591, 594 (7th Cir. 2011) (emphasis in original).

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

Response: Please see my answers to Questions 18 and 18(a).

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

Response: No.

19. **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: In *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049 (2020), the Supreme Court further clarified the "ministerial exception" recognized in *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 565 U.S. 171 (2012) applies to lay teachers employed at Catholic schools whose religious teaching responsibilities "lie at the very core of the mission of a private religious school." *Morrissey-Berru*, 140 S. Ct. 2064.

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

Response: In *Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2021), the United States Supreme Court held that Philadelphia's refusal to contract with Catholic Social Services (CSS) pursuant to its non-discrimination policy unless CSS agreed to certify same-sex couples as foster parents violated the Free Exercise Clause of the First Amendment. The non-discrimination policy was not neutral or generally applicable because the Commissioner was permitted to make exceptions at his discretion, and it failed strict scrutiny.

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

Response: *Mast v. Fillmore County*, 141 S. Ct. 2430 (2021) involved an Amish community's challenge to a county's ordinance requiring a modern septic system; the county denied the petitioners' request to be exempt from the ordinance based on their religious beliefs. The Amish

sued under the Religious Land Use and Institutionalized Persons Act (RLUIPA). The state trial court ruled for the county, and that decision was affirmed by the Minnesota Court of Appeals; the Minnesota Supreme Court denied review. The United States Supreme Court granted certiorari and vacated the lower court's decision citing its recent decision in *Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2021). The lower court erred because it did not apply its strict scrutiny analysis specifically to the Amish community and consider the specific harms to the Amish in denying them an exemption to the ordinance when flexibility was shown in granting exemptions to campers and rustic property owners, for example. *Mast*, 14 S. Ct. at 2432-33.

22. **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: No.

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

Response: No.

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

Response: No.

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

Response: No.

23. **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: While I am unsure what role, if any, judges in the Northern District of Illinois play in overseeing such training, I am comfortable making this commitment.

24. **Is the United States' criminal justice system systemically racist?**

Response: This is a question for policymakers to answer based on data and research. Should I be confirmed, I would be duty-bound to follow the precedent of the United States Supreme Court and the Seventh Circuit Court of Appeals, including in any cases alleging claims of racial discrimination.

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

Response: This is a question for policymakers to answer based on data and research. Should I be confirmed, I would be duty-bound to follow the precedent of the United States Supreme Court

and the Seventh Circuit Court of Appeals, including in any cases alleging claims of sex discrimination.

26. **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.

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

Response: Should I be confirmed and the issue of race, color, or sex discrimination in a political appointment came before me, I would apply the precedent of the United States Supreme Court and the Seventh Circuit Court of Appeals to the facts before me.

28. **Should members of the judiciary use or avoid particular words to avoid offending litigants or the public or to make the courtroom more "inclusive"? For example, should a federal judge who is writing an opinion about provisions of the Immigration & Naturalization Act still use the term "illegal alien," the term used in the status?**

Response: Should I be confirmed, civility, respect for all, and clarity will be touchstones in my courtroom. For clarity, I will use terms used in statutes, but may also substitute like terms as Justice Kavanaugh has modeled. *Barton v. Barr*, 140 S. Ct. 1442, 1446 n.2 (2020) (noting that "[t]his opinion uses the term 'noncitizen' as equivalent to the statutory term 'alien.'").

29. **Do you think that members of the judiciary should use the word "Latinx" rather than "Latino" to describe people of Latin American cultural or ethnic identity?**

Response: I think members of the judiciary should use the terms with which they are comfortable, whether that is Latinx or Latino/a. In my practice, for example, I have used only the terms Hispanic, Latino or Latina, choosing one out of deference to my client's preferred term.

30. **You joined a letter signed by "Latinx alumni of Columbia Law School" in support of Judge Myrna Perez. It's clear that at least in this instance of your professional life, you adopted the use of "Latinx" as a substitute for the traditional word in Spanish, "Latino." If you saw public polling data to suggest that Latin Americans actually prefer Latino over Latinx, or vice versa, would you change the term that you use from the bench and in opinions?**

Response: I have only used the terms Latino/a or Hispanic in my professional life when I was responsible for the relevant language choice. With regard to the letter of support for Judge Perez, I did not draft the letter and deferred to the author's word choice.

31. **In December 2021, a Democrat polling firm that specializes in Latino outreach conducted a survey of Latin American voters that found that only 2% of respondents refer to themselves as "Latinx," compared to 68% who call themselves "Hispanic," and another 21% that prefer "Latino or Latina." The poll results go on. 40% of these Latin American**

respondents said that "Latinx bothers or offends them to some degree," and 30% would be less likely to support an organization or politician that uses the term Latinx. Pew Research and Gallup found similar results. Do you find these results persuasive one way or another for how you personally will refer to this ethnic group?

Response: Please see my answers to Questions 28, 29, and 30. In further response, should I be confirmed, I would not base any verbiage in my decisions on polls. "A judge should be faithful to, and maintain professional competence in, the law and should not be swayed by partisan interests, public clamor, or fear of criticism." Canon 3(A)(1), Code of Conduct for United States Judges.

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

Response: This is a matter for policymakers to decide.

33. **In 2012, you represented the Brady Center to Prevent Gun Violence in *Wilson v. County of Cook*, where the Brady Center's brief rejected the idea that law- abiding citizens would seek to possess semi-automatic weapons for self- defense or other lawful purposes. Instead, the brief suggested that "assault weapons would pose severe dangers to innocent persons if someone were to attempt to use one as a home defense weapon." Do you believe these weapons should fall outside the scope of rights protected by the Second Amendment?**

Response: The Seventh Circuit upheld the Cook County assault weapons ban at issue as consistent with the Second Amendment in *Wilson v. Cook County*, 937 F.3d 1028, 1035 (7th Cir. 2019) ("bans on assault weapons and large-capacity magazines do not contravene the Second Amendment"). Should I be confirmed, I will be duty-bound to follow Seventh Circuit and Supreme Court precedent irrespective of my personal beliefs and opinions.

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

Response: I respectfully decline to answer.

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

Response: No.

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

Response: No.

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

Response: Should I be confirmed and this issue were to come before me, I would apply Supreme Court and Seventh Circuit precedent to the facts before me.

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

Response: My understanding is that prosecutors have discretion to decide whether to prosecute a particular offense in a particular instance based on a number of factors including the facts of the case and the applicable law. In contrast, a substantive administrative rule change is the act of an agency subject to notice and comment and other rulemaking provisions.

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

Response: No, only Congress may do so.

40. **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*, 141 S. Ct. 2485 (2021), the United States Supreme Court vacated a stay pending appeal of a court order enjoining the Center for Disease Control (CDC) COVID-19 eviction moratorium. The plaintiffs were likely to succeed on their appeal because the CDC exceeded its statutory authority in issuing the eviction moratorium.

Senator Josh Hawley
Questions for the Record

Nancy Maldonado
Nominee, Northern District of Illinois

1. **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: No, it is the judge's role to interpret and apply the laws, not make them.

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

    Response: The statement is inconsistent with the judicial oath, which requires judges to "discharge and perform all the duties incumbent upon" them "under the Constitution and laws of the United States." 28 U.S.C. §453. Our Constitution sets up a system of separation of powers whereby Article I vests Congress with the power to make laws, and Article III vests the courts with the power to interpret the law. *See Marbury v. Madison*, 5 U.S. 137 (1803).

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

    Response: Federal courts are courts of limited jurisdiction and federalism dictates that they defer to state courts in certain circumstances. A federal district court should abstain from exercising jurisdiction over a case and when:

    (a) State court proceedings can resolve the issues in the case. *Railroad Comm. of Tex. v. Pullman Co*., 312 U.S. 496 (1941). "Under *Pullman* abstention, a court abstains in order to avoid unnecessary constitutional adjudication." *Int'l. Coll. of Surgeons v. City of Chi*., 153 F.3d 356, 361 (7th Cir. 1998).

    (b) A state court criminal prosecution brought in good faith is pending. *Younger v. Harris*, 401 U.S. 37 (1971). "*Younger* and its progeny "require federal courts to abstain from enjoining ongoing state proceedings that are (1) judicial in nature, (2) implicate important state interests, and (3) offer an adequate opportunity for review of constitutional claims, (4) so long as no extraordinary circumstances—like bias or

harassment—exist which auger against abstention." *FreeEats.com, Inc. v. Indiana*, 502 F.3d 590, 596 (7th Cir. 2007) (citations and quotations omitted).

(c) A state agency action is being challenged. *Burford v. Sun Oil Co*., 319 U.S. 315 (1943). "[F]ederal courts will abstain from deciding unsettled questions of state law that relate to a complex state regulatory scheme." *Int'l. Coll. of Surgeons v. City of Chi*., 153 F.3d 356, 361 (7th Cir. 1998). This can occur when: (1) there are "difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result in the case then at bar"; or (2) exercising federal jurisdiction "would be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern." *Id*. at 362 (quotations and citations omitted). With respect to (2), *Burford* abstention is only justified if the state offers a specialized forum to litigate the claims. *Id*.

(d) A party challenges the constitutionality of a final state court judgment – these matters are reserved to the United States Supreme Court. *Rooker v. Fidelity Trust*, 263 U.S. 413 (1923); and *Dist. of Columbia Ct. of Appeals v. Feldman*, 460 U.S. 462 (1983). A court must determine whether a plaintiff is seeking to set aside a state court judgment or presenting an independent claim – only the latter should be litigated in federal court. *Taylor v. Fed. Nat. Morg. Ass'n*., 374 F.3d 529, 532-33 (7th Cir. 2004). Nor should claims that are inextricably intertwined with the state court judgment be litigated, unless a plaintiff can show that he was prevented from raising his federal claim during state court proceedings. *Id*. at 533.

(e) There are concurrent federal and state court cases pending and "exceptional circumstances" exist. *Colorado River Water Conservation Dist. v. U.S*., 424 U.S. 800 (1976)). The court first examines whether the two actions are parallel or whether there is a substantial likelihood that the state litigation will dispose of all the claims presented in the federal case; if not, the analysis ends. *Freed v. J.P. Morgan Chase Bank, N.A*., 756 F.3d 1013, 1018-19 (7th Cir. 2014). If the actions are parallel, the court must weigh the following ten factors, no one of which is dispositive:

(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 1018.

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

   Response: I cannot recall any such case or representation.

   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: I cannot recall any such case or representation.

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

   Response: The original public meaning of the Constitution's text governs when precedent dictates that it should. For example, in interpreting the Second Amendment, I would follow the Supreme Court's guidance in *District of Columbia v. Heller*, 554 U.S. 570, 576-77 (2008) to look at the "normal and ordinary" meaning of words and not "secret or technical meanings that would not have been known to ordinary citizens in the founding generation."

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

   Response: When a text is ambiguous and there is no binding precedent interpreting the text, a court may look at legislative history as an interpretive tool of last resort. *Exxon Mobil Corp. v. Allapattah Servs., Inc*., 545 U.S. 546, 568 (2005).

   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 instructed that Committee Reports are the most reliable form of legislative history and floor statements the least. *Garcia v. U.S.*, 469 U.S. 70, 76 (1984) (quoting *Zuber v. Allen*, 396 U.S. 168, 186 (1969)); *NLRB v. SW General Inc*., 137 S. Ct. 929, 943 (2017).

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

      Response: Federal courts should not rely on foreign laws in interpreting the provisions of the U.S. Constitution. The Supreme Court, however, has looked to English common law as a historical reference when interpreting the

Second Amendment. *District of Columbia v. Heller*, 554 U.S. 570, 591-594 (2008).

6. **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 violation of the Eighth Amendment's prohibition on cruel and unusual punishment, a plaintiff challenging an execution protocol must show: (1) a feasible, readily implemented alternative method of execution that significantly reduces a substantial risk of severe pain; and (2) the State's refusal to adopt the alternative method without a legitimate penological reason. *Bucklew v. Precythe*, 139 S. Ct. 1112, 1125 (2019). *Lambert v. Buss*, 498 F.3d 446,451-52 (7th Cir. 2007) (plaintiff's execution by lethal injunction not stayed where the execution protocol "both as written and as it will be applied…does not create a significant and unnecessary risk that Lambert will suffer unnecessary pain during the execution process…[and] the defendant has negated the existence of the equally necessary subjective element of an Eighth Amendment violation-the requirement of deliberate indifference.").

7. **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, please see answer to Question 6.

8. **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: The Supreme Court rejected a petitioner's argument that he had a substantive due process right to post-conviction access to the State's evidence for DNA testing in *District Attorney's Office for Third Judicial Dist. v. Osborne*, 557 U.S. 52, 61-62 (2009). While the Seventh Circuit has noted that "[s]ubstantive due process or a right to prove actual innocence might also support a post-conviction right of access to physical evidence," it reserved that question given the plaintiff's claims were not timely in that case. *Savory v. Lyons*, 469 F.3d at 667, 675 (7th Cir. 2006).

9. **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.

10. **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: Assuming facial neutrality, an analysis of whether a state government action violates the Free Exercise Clause examines the government's motivation. If the government was motivated by religious animus or any hostility to religion, the government action is subject to strict scrutiny. *Church of the Lukumi Babalu Aye, Inc., v. City of Hialeah*, 508 U.S. 520, 534-42 (1993) (ordinance targeting Santeria failed strict scrutiny); *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n*, 138 S. Ct. 1719, 1729-31 (2018) (application of public accommodations law failed strict scrutiny in light of Commissioners' hostility to baker's religious belief).

    In several more recent cases, the Supreme Court has further clarified the standards of neutrality and general applicability that apply to Free Exercise cases: *Fulton v. City of Phila*., 141 S. Ct. 1868, 1877 (2021) (non-discrimination clause was not neutral or generally applicable and failed strict scrutiny where the Commissioner was permitted to make exceptions at his discretion); *Tandon v. Newsom*, 141 S.Ct. 1294, 1296 (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."); *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 66 (2020) ("A law is not generally applicable if it invites government to consider particular reasons for a person's conduct by providing a mechanism for individualized exemptions" or "if it prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way.")

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

    Response: Please see my response to Question 10.

12. 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: Supreme Court precedent instructs that sincerely held religious beliefs are protected irrespective of whether they derive from a particular religious organization or are in agreement with the mainstream of their religious membership. *Frazee v. Ill. Dep't of Emp. Sec*., 489 U.S. 829, 833-34 (1989). The Seventh Circuit has further clarified (in the prison context) that "although sincerity rather than orthodoxy is the touchstone, a prison still is entitled to give *some* consideration to an organization's tenets. For the more a given person's professed beliefs differ from the orthodox beliefs of his faith, the less likely they are to be sincerely held." *Vinning-El v. Evans*, 657 F.3d 591, 594 (7th Cir. 2011) (emphasis in original).

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

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

Response: The Second Amendment protects an individual's right to keep and bear arms.

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.

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

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

Response: I understand Justice Holmes' statement to indicate that the Fourteenth Amendment does not enact or endorse any particular economic theory.

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

Response: Should I be confirmed, I would not apply *Lochner* as the Supreme Court explicitly stated in *Ferguson v. Skrupa*, 372 U.S. 726, 730 (1963) that the "doctrine that prevailed in *Lochner*…and like cases—that due process authorizes courts to hold laws unconstitutional when they believe the legislature has acted unwisely—has long since been discarded."

15. 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: Should I be confirmed as federal district court judge, I would be duty-bound to follow all Supreme Court precedent.

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, please see answer to Question 15.

16. 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: Should I be confirmed, I would follow all Supreme Court and Seventh Circuit precedent as to whether a particular market share constitutes a monopoly.

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

Response: Please see answer to Question 16(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: Should I be confirmed, I would follow all Supreme Court and Seventh Circuit precedent as to whether a particular market share constitutes a monopoly. In *Eastman Kodak Co. v. Image Tech. Servs. Inc*., 504 U.S. 451, 481 (1992) ("80% to 95% of the service market, with no readily available

substitutes, is…sufficient to survive summary judgment under the more stringent monopoly standard of §2.").

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

Response: Black's Law Dictionary defines "federal common law" as "[t]he body of decisional law derived from federal courts when adjudicating federal questions and other matters of federal concern, such as disputes between the states and foreign relations, but excluding all cases governed by state law." *Common Law*, Black's Law Dictionary (11th ed. 2019). There is "no federal general common law." *Erie R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938) (federal courts sitting in diversity must apply state substantive law and federal procedural law).

18. 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: Should I be confirmed, I would defer to the highest state court's interpretation of its own constitution. *Erie R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938).

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

Response: Please see my answer to Question 18.

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

Response: Consistent with our federalist system, generally speaking, a state constitutional provision can provide greater protections than a federal provision if the state so decides to provide greater protection.

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

Response: Canon 3 of the Code of Conduct for United States Judges requires that I, as a judicial nominee, refrain from any public comment on issues that might come before me. That being said, following the lead of other nominees, it is unlikely that this issue will come before me, such that I am comfortable stating that *Brown v. Board of Education* was correctly decided.

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

Response: Yes, Federal Rule of Civil Procedure 65 governs injunctions. An "injunction is a drastic and extraordinary remedy, which should not be granted as a matter of course." *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165 (2010). A nationwide injunction is permissible if needed to provide complete relief to the plaintiffs. *Callano v. Yamasaki*, 442 U.S. 682, 702 (1979). *See also City of Chi. v. Barr*, 961 F.3d 882, 916-17 (7th Cir. 2020).

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

Response: Please see my answer to Question 20.

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

Response: Please see my answer to Question 20.

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

Response: Please see my response to Question 20.

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

Response: Our constitutional system is premised on the concept of federalism, or the distribution of power among state and federal governments. In *Gregory v. Ashcroft*, 501 U.S. 452, 458 (1991), the Supreme Court recognized that "a healthy balance of power between the States and the Federal Government…reduce[s] the risk of tyranny and abuse from either front." *Id*.

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

Response: Please see answer to Question 2.

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

Response: Whether damages or injunctive relief should be awarded in any particular case is specific to the facts and the remedies available under law. Injunctive relief is typically awarded when money damages will not suffice, but should not be granted

as a matter of course. *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165 (2010)

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

Response: The Fifth and Fourteenth Amendments' prohibition on the deprivation of "life, liberty or property, without due process of law" contains a substantive component. In *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997), the Supreme Court held that due process protects "fundamental rights and liberties, which are, objectively, deeply rooted in this Nation's history and tradition," and "implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed[.]" *Id*. (internal quotations omitted).

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

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

Response: Please see my answer to Question 10.

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

Response: The Supreme Court has articulated that the free exercise of religion is broader than the freedom to worship and protects not just the freedom to worship but "the individual's freedom to believe…and to express himself in accordance with the dictates of his own conscience." *Wallace v. Jaffree*, 472 U.S. 38, 49 (1985).

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: *Burwell v. Hobby Lobby Stores, Inc*., 573 U.S. 682, 720 (2014) provides the substantial burden standard: whether the government "mandate demands that [the respondents] engage in conduct that seriously violates their religious beliefs," and whether the failure to comply with the mandate would subject them to "severe" economic consequences. *Id*.

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

Response: Please see response to Question 12.

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: The Religious Freedom Restoration Act ("RFRA") "applies to all Federal law, and the implementation of that law, whether statutory or otherwise." 42 U.S.C. §2000bb-3(a).

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.

27. 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: Judges must set aside their personal opinions and decide cases on the facts and the law. Judicial decisionmaking should not be driven by an outcome that the judge wants or likes.

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

Response: I cannot recall taking any position on the unconstitutionality of a federal or state statute.

a. If yes, please provide appropriate citations.

Response: Not applicable.

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

Response: No.

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

Response: This is a question for policymakers to answer based on data and research. Should I be confirmed, I would be duty-bound to follow the precedent of the United States Supreme Court and the Seventh Circuit Court of Appeals, including in any cases alleging racial discrimination.

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

Response: Yes, as an advocate, at times I have not personally agreed with arguments grounded in the facts and the law that were in the best interest of my client. However, I take my oath to represent my clients zealously seriously and set aside my personal beliefs to advocate for the best arguments for my clients. Likewise, should I be confirmed, I will adhere to my judicial oath and decide cases fairly and impartially.

32. How did you handle the situation?

Response: Please see my answer to Question 31.

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

Response: Yes.

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

Response: My study of the Federalist Papers dates back to the 1990s and at this time, I cannot say which, if any, has shaped my views of the law.

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

Response: As a judicial nominee, it would be inappropriate for me to share my personal belief on the question of when human life begins. Should I be confirmed, I would fairly and impartially apply Supreme Court and Seventh Circuit precedent to any case before me.

36. 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: I may have testified under oath in connection with my divorce proceedings. I do not believe that any testimony is available online or as a record.

37. 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.

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

a. Apple?

Response: No.

b. Amazon?

Response: No.

c. Google?

Response: No.

d. Facebook?

Response: No.

e. Twitter?

Response: No.

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

Response: To the best of my recollection, I have not authored a brief or substantively edited a brief that was filed in court without my name. Over the last 19 years, it has been commonplace at my small collegial firm for colleagues to request that I read and proof briefs in their cases; I do not recall with any specificity the occasions on which I have assisted in this capacity.

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

Response: Please see response to Question 39.

40. Have you ever confessed error to a court?

Response: I do not recall such an instance.

a. If so, please describe the circumstances.

Response: Not applicable.

41. 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: I understand that nominees must answer all questions truthfully and to the best their ability, while adhering to the Code of Conduct for United States Judges. I have endeavored to be as candid as ethics permit.

Questions for the Record for Nancy L. Maldonado
From Senator Mazie K. Hirono

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

   a. **Since you became a legal adult, have you ever made unwanted requests for sexual favors, or committed any verbal or physical harassment or assault of a sexual nature?**

      Response: No.

   b. **Have you ever faced discipline, or entered into a settlement related to this kind of conduct?**

      Response: No.

Senator Mike Lee
Questions for the Record
Nancy Maldonado, nominee to the United States District Court for the Northern District of Illinois

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

   Response: My judicial philosophy would be to fairly and impartially apply the law to the record before me. Should I be confirmed, I would aim to be transparent and consistent in my application of the law, mindful of my oath to "administer justice without respect to persons, and do equal right to the poor and to the rich." 28 U.S.C. §453.

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

   Response: After first examining the statutory text itself, I would research whether there were any Supreme Court or Seventh Circuit decisions interpreting the statute. That would end the inquiry if there were binding precedent.

   If there were no binding precedent interpreting the provision at issue, I would look to other circuits, and then other district courts, as persuasive authority. I would also delve deeper, for instance, researching the statutory scheme overall, the interpretation of similar statutory provisions, and precedent on which tools of statutory construction would be appropriate to use and employ them.

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

   Response: I would consult first the text of the constitutional provision itself and research whether there were any Supreme Court or Seventh Circuit decisions interpreting the provision, employing the original public meaning when directed to do so. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008).

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

   Response: Please see answer to Question 3.

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

   Response: Please see answer to Question 2.

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

Response: As a general matter, I under that plain meaning refers to meaning at the the time of enactment. For example, in interpreting the Second Amendment, I would follow the Supreme Court's guidance in *District of Columbia v. Heller*, 554 U.S. 570, 576-77 (2008) to look at the "normal and ordinary" meaning of words and not "secret or technical meanings that would not have been known to ordinary citizens in the founding generation." *Id*.

6. What are the constitutional requirements for standing?

Response: *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992) established that a plaintiff must show an injury in fact, traceable to the defendant's conduct, that is likely to redressed by a favorable decision.

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

Response: Yes, the seminal case of *McCullough v. Maryland*, 17 U.S. 316, 421 (1819) held that under the Necessary and Proper Clause of Article 1, Section 8, Congress has implied powers beyond those enumerated in the Constitution, in that case to set up a national bank.

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

Response: Regardless of whether the law references an enumerated power, the case would turn on whether the law falls within Congress' powers to legislate. In evaluating the law, I would follow all Supreme Court and Seventh Circuit precedent.

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

Response: Yes, in *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997), the Supreme Court held that the due process clauses of the Fifth and Fourteenth Amendments protect "fundamental rights and liberties, which are, objectively, deeply rooted in this Nation's history and tradition," and "implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed[.]" *Id*. (internal quotations omitted).

The Supreme Court has found unenumerated rights to marry, *Loving v. Virginia*, 388 U.S. 1 (1967); *Obergefell v. Hodges,* 576 U.S. 644 (2015); to marital privacy and contraception, *Griswold v. Connecticut*, 381 U.S. 479 (1965); to have children, *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942); to direct the education and upbringing of one's children, *Meyer v. Nebraska*, 262 U.S. 390 (1923); *Pierce v. Soc. of Sisters*, 268 U.S. 510 (1925); and to abortion, *Roe v. Wade*, 410 U.S. 113 (1973); *Planned Parenthood of Southeast Penn. v. Casey*, 505 U.S. 833 (1992).

10. What rights are protected under substantive due process?

Response: Please see answer to Question 9.

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

Response: Please see answer to Question 9. I will faithfully follow the precedent of the Supreme Court and Seventh Circuit. The Supreme Court in 1963 noted that the *Lochner* doctrine "ha[d] long since been discarded." *Ferguson v. Skrupa*, 372 U.S. 726, 730 (1963).

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

Response: In *United States v. Lopez*, 514 U.S. 549, 558-59 (1995), the Supreme Court ruled that Congress has power under the Commerce Clause to regulate: (i) the use of channels of interstate commerce; (ii) the instrumentalities of interstate commerce or persons or things in interstate commerce; and (iii) the activities that substantially affect interstate commerce. *Id*.

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

Response: The Supreme Court has identified race, national origin, religion and alienage as suspect classifications. *Graham v. Richardson*, 403 U.S. 365, 371-72 (1971) (citation omitted); *City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976).

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

Response: Separation of powers and checks and balances are the cornerstone of our Constitution. Articles I, II, and III grant separate powers to the legislative, executive, and judicial branches – to make, enforce, and interpret the law, respectively. This purposeful structure is to avoid concentration of power in any one branch.

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

Response: I would follow Supreme Court and Seventh Circuit precedent evaluating whether any branch exceeded the powers granted to it by the Constitution.

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

Response: None.

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

Response: Both are improper and should be avoided.

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

Response: I have not had an opportunity to survey and evaluate the Supreme Court's record of invalidating federal statutes. Our country has grown significantly since its infant years thus it is not unexpected that both legislation and judicial review would have increased as well. However, our system is premised on a balance of power between branches and I would be wary of both extremes being indicative of either the judiciary abdicating its powers or encroaching on the powers of the legislative and executive branches.

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

Response: Judicial review generally refers to the courts' power to review legislative and executive acts, as established in *Marbury v. Madison*, 5 U.S. 137 (1803). Judicial supremacy refers to the binding nature of the United States Supreme Court's decisions interpreting the Constitution on both the legislative and executive branches and the states.

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

Response: All members of the executive, legislative, and judicial branches are "bound by Oath or Affirmation, to support this Constitution," Article VI of the Constitution. In an ideal world, if all members are abiding by their oaths, such conflicts would be rare or non-existent. Elected officials must respect the structure of our system, including judicial supremacy.

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

Response: This is a reminder that judges neither make the laws (or hold the purse), nor enforce the laws (or hold the sword). A judge's job is to judiciously apply and interpret the law in relation to the particular case or controversy before her.

22. As a district court judge, you would be bound by both Supreme Court precedent and prior circuit court precedent. What is the duty of a lower court judge when confronted with a case where the precedent in question does not seem to be rooted in constitutional text, history, or tradition and also does not appear to speak directly to the issue at hand? In applying a precedent that has questionable constitutional underpinnings, should a lower court judge extend the precedent to cover new cases, or limit its application where appropriate and reasonably possible?

Response: Should I be confirmed, I would apply all Supreme Court and Seventh Circuit precedent. The job is one of restraint and I would not seek to extend or limit precedent where it does not apply, and do my best to decide the case before me.

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

Response: None.

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

Response: I am not familiar with this quotation or definition and do not have a personal definition of "equity." It is also inappropriate as a judicial nominee for me to opine on a political position of the executive branch. As an attorney, I define "equity" as "[f]airness; impartiality; evenhanded dealing." *Equity*, Black's Law Dictionary (11th ed. 2019). Should I be confirmed, I would aim to be fair, impartial, and evenhanded as the canons dictate I should be. Should I be confirmed, I will follow all Supreme Court and Seventh Circuit precedent.

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

Response: Black's Law Dictionary defines "equity" as "[f]airness; impartiality; evenhanded dealing" and "equality" as "[t]he quality, state, or condition of being equal; esp., likeness in power or political status." *Equity* and *Equality*, Black's Law

Dictionary (11th ed. 2019). Should I be confirmed, I will uphold my oath to "do equal right" to all persons who come before me. 28 U.S.C. §453.

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

Response: The word "equity" does not appear in the text of the 14th Amendment, which states that persons should not be denied "the equal protection of the laws." Please see my answer to Question 24.

27. How do you define "systemic racism?"

Response: I have not previously articulated a personal definition of "systemic racism" and have not studied this issue. I generally understand it to be the idea that institutions that were formed during times where there was *de jure* or *de facto* discrimination may carry remnants of that history into the present. Should I be confirmed, I will follow all Supreme Court and Seventh Circuit precedent on matters of race.

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

Response: I have not previously articulated a personal definition of "critical race theory" and have not studied the theory. I generally understand it to be an academic legal theory that views the law through the lens of race. Should I be confirmed, I will follow all Supreme Court and Seventh Circuit precedent on matters of race.

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

Response: Not having studied either "critical race theory" or "systemic racism," I cannot offer a thoughtful response. Should I be confirmed, I will follow all Supreme Court and Seventh Circuit precedent on matters of race.

Senator Ben Sasse
Questions for the Record for Nancy L. Maldonado
U.S. Senate Committee on the Judiciary
Hearing: "Nominations"
May 11, 2022

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

   Response: No.

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

   Response: My judicial philosophy would be to fairly and impartially apply the law to the record before me. Should I be confirmed, I would aim to be transparent and consistent in my application of the law, mindful of my oath to "administer justice without respect to persons, and do equal right to the poor and to the rich." 28 U.S.C. §453.

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

   Response: Black's Law Dictionary defines "originalism" as "[t]he doctrine that 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). For example, in interpreting the Second Amendment, I would follow the Supreme Court's guidance in *District of Columbia v. Heller*, 554 U.S. 570, 576-77 (2008) to look at the "normal and ordinary" meaning of words and not "secret or technical meanings that would not have been known to ordinary citizens in the founding generation." *Id*.

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

   Response: I do not adhere to labels, but I would start any statutory or constitutional analysis with a reading of the text.

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

   Response: Black's Law Dictionary defines "living constitutionalism" as "[t]he doctrine that the Constitution should be interpreted and applied in accordance with changing circumstances and, in particular, with changes in social values." *Living Constitutionalism*, Black's Law Dictionary (11th ed. 2019). I have not characterized myself as a "living constitutionalist."

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

Response: I have not had an opportunity to perform an in-depth study of the jurisprudence of Justices since 1953. Should I be confirmed, I would be duty-bound to follow all the precedent of the United States Supreme Court without regard to my feelings about their jurisprudence.

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

   Response: An appellate court (in my case, the Seventh Circuit) is bound by its own precedent until it is overruled by an *en banc* decision of that court or the United States Supreme Court.

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

   Response: Please see my response to Question 7.

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

   Response: When a statute is ambiguous and there is no binding precedent interpreting it, a court may look at legislative history as an interpretive tool of last resort. *Exxon Mobil Corp. v. Allapattah Servs., Inc*., 545 U.S. 546, 568 (2005). I am not aware of any precedent that states that "general principles of justice" should play a role in statutory interpretation.

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

    Response: Should I be confirmed, I would sentence individual defendants based on the specific facts of their individual cases and adhere to the factors set forth in 18 U.S.C. §3553(a), which do not include race.

Questions from Senator Thom Tillis
for Nancy Maldonado
Nominee to be United States District Judge for the Northern 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: In my view, judicial activism is when a judge goes outside the bounds of the record or precedent to reach an outcome with which they personally agree, usually motivated by personal beliefs. It is not appropriate.

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

   Response: Impartiality is an expectation in the Code of Conduct for United States Judges.

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, faithful interpretation of the law will lead to outcomes that a judge may not desire. Canon 3 of the Code of Conduct for United States Judges requires that a judge set aside any person beliefs and not "be swayed by partisan interests, public clamor, or fear of criticism."

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

   Response: No.

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

   Response: I would faithfully apply the Supreme Court's precedent in *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. City of Chicago*, 561 U.S. 742 (2010) as well as any other Supreme Court and Seventh Circuit precedent on this issue, including any decision to be rendered in *N.Y. State Rifle & Pistol Ass'n, Inc., v. Bruen*, No. 20-843, currently pending before the Supreme Court.

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

   Response: As a judicial nominee, it would be inappropriate for me to opine on a hypothetical that includes issues that could come before me. Should I be confirmed, I will faithfully apply Supreme Court and Seventh Circuit precedent to all cases before me.

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

   Response: Should I be confirmed, I would adhere to the binding precedent of the Supreme Court and Seventh Circuit on qualified immunity, which includes a two-part test: (1) whether plaintiff alleges that a constitutional right was violated; and (2) whether that right was clearly established at the time. *Pearson v. Callahan*, 555 U.S. 223, 236 (2009).

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: This is a question for policymakers. Please see my answer to Question 9.

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

    Response: This is a question for policymakers. Please see my answer to Question 9.

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

    Response: In my 21 years of practice, I only worked on patent issues as a district court law clerk. In those cases, I delved into the factual and legal issues set forth in the case, and I would do the same should I be confirmed, following any 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?

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?**

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?**

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?**

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?**

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?**

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?

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?**

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?**

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 judicial nominee, it would be inappropriate for me to opine on any hypotheticals that include issues that could come before me. Should I be confirmed, I will faithfully apply Supreme Court and Seventh Circuit precedent to all cases before me.

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

Response: Please see answer to Question 12.

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: In my 21 years of practice, I have not worked on a copyright case. Should I be confirmed, I would delve into the factual and legal issues set forth in any such case, following any Supreme Court and Seventh Circuit precedent.

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

Response: None.

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

Response: None.

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

Response: I litigated First Amendment issues in *Vergara v. City of Waukegan*, No. 04 C 6586 (N.D. Ill.) (Shadur, Mason, Cox, JJ.), No. 09-1165 (7th Cir.) (Clevert, Manion, Williams, JJ.).

In my 21 years of practice, I worked on intellectual property issues as a district court law clerk. In those cases, I delved into the factual and legal issues set forth in the case, and I would do the same should I be confirmed, following any Supreme Court and Seventh Circuit precedent.

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: Where there is ambiguity in the meaning of legislative text, a court may look at legislative history as an interpretative tool of last resort. *Exxon Mobil Corp. v. Allapattah Servs., Inc*., 545 U.S. 546, 568 (2005).

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

Response: The deference owed to the advice and analysis of the U.S. Copyright Office would depend on the format in which it was presented. If the advice and analysis were in the form of opinion letters or the like, they would be entitled to respect if they had the "power to persuade." *Christensen v. Harris Cnty*., 529 U.S. 576, 587 (2000).

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

Response: As a judicial nominee, it would be inappropriate for me to opine on any hypotheticals that include issues that could come before me. Should I be confirmed, I will faithfully apply Supreme Court and Seventh Circuit precedent to all cases before me.

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

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

Response: Judges have an obligation to do their best to apply statutes and legal precedent regardless of whether statutes have kept pace with the current digital environment -- the responsibility for updating those statutes lies with other branches of government. Should I be confirmed, I would apply Supreme Court and Seventh Circuit precedent regarding the DMCA and other digital environmental laws.

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

Response: Please see response to Question 17(a).

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: As a judicial nominee, it would be inappropriate for me to opine on issues that could come before me. Should I be confirmed, I will faithfully apply Supreme Court and Seventh Circuit precedent to all cases before me.

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

Response: Please see answer to Question 18(a). Should I be confirmed, I will faithfully apply Supreme Court and Seventh Circuit precedent to all cases before me, as well as any rules regarding venue.

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: The concept of "forum selling" described seems antithetical to the Code of Conduct for United States Judges. I commit that if I am confirmed, I will not proactively take steps "to attract a particular type of case or litigant." Should I be confirmed, I will faithfully apply Supreme Court and Seventh Circuit precedent to all cases before me.

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

Response: Please see answer to Question 18(c).

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: As a judicial nominee, it would be inappropriate for me to opine on this issue. Should I be confirmed, I will faithfully apply Supreme Court and Seventh Circuit precedent to all cases before me.

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

Response: As a judicial nominee, it would be inappropriate for me to opine on this issue. Should I be confirmed, I will faithfully apply Supreme Court and Seventh Circuit precedent to all cases before me.

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: As a judicial nominee, it would be inappropriate for me to opine on this issue, which is currently being examined by the Judicial Conference. Should I be confirmed, I will faithfully apply Supreme Court and Seventh Circuit precedent to all cases before me.

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

Response: Please see my answer to Question 20.

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: Please see my answer to Question 20.

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 judicial nominee, it would be inappropriate for me to opine on this issue. Should I be confirmed, I will faithfully apply Supreme Court and Seventh Circuit precedent to all cases before me.

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

Response: As a judicial nominee, it would be inappropriate for me to opine on this issue. Should I be confirmed, I will faithfully apply Supreme Court and Seventh Circuit precedent to all cases before me.