Senator Dick Durbin
Chair, Senate Judiciary Committee
Written Questions for Judge Doris Pryor
Nominee to the Court of Appeals for the Seventh Circuit
July 20, 2022

1. **You have spent nearly the entirety of your legal career practicing in federal court. Over the course of your time in practice, you tried eight cases to verdict, judgment, or final decision, all of which were jury trials. You also briefed and argued several federal appeals and have issued many decisions in your four years as a federal magistrate judge.**

   How have these experiences prepared you to serve as a federal appellate judge?

   Response: As a United States Magistrate Judge, I have handled a wide range of judicial proceedings, from personal injury, employment discrimination, and construction litigation to trademark disputes, and more recently, multi-plaintiff litigation. I have carried an average caseload of 500 civil matters. During my tenure as a magistrate judge, I have undertaken new areas of the law. I am a quick learner and I know how to manage a heavy caseload, function quickly and decisively in a highly demanding environment, and effectively manage complex cases. I have extensive experience in criminal preliminary proceedings, handling complex and voluminous discovery, civil and criminal forfeiture proceedings, evidentiary proceedings, and resolving misdemeanor criminal matters in the magistrate court. One trait integral to successfully executing all of my responsibilities is my ability to work well with others – from pro se litigants to seasoned attorneys, and with staff members, colleagues, and other courts – and to truly listen to and respect those with whom I work. I believe that my experience in working with diverse groups and their leaders in a wide variety of situations will aid me in being an effective appellate judge.

   During my tenure with the United States Department of Justice as an Assistant United States Attorney, I handled a variety of criminal matters including writing briefs and arguing cases before the Seventh Circuit. While with the Department, I served as the National Security Chief for the U.S. Attorney's Office for the Southern District of Indiana and I was tasked with leading the District's efforts to disrupt terrorists and other national security threats. This went well beyond overseeing national security investigations and prosecutions. I was responsible for ensuring the effective collaboration of numerous federal, state, and local law enforcement and other public safety officials to ensure protection of the district and prevention of terrorist plots and attacks. As National Security Chief, I was also a member of the U.S. Attorney's management team.

   I have an intense and long-standing interest in serving the public. For two years following law school, I had the distinct honor of serving as a federal law clerk in the United States Court of Appeals for the Eighth Circuit and the United States District Court for the Eastern District of Arkansas. In addition to my federal experience, I also served as a local public defender in Miller County, Arkansas Public Defender's Commission, where I provided legal services for indigent clients.

Because my professional career has been nearly exclusively in federal court, I understand and appreciate the demanding and wide-ranging work of federal judges. The conflation of working in these diverse areas of law with the required necessity to see all sides of an inquiry or dispute and points of view lend me skills applicable to the federal appellate court. I bring a robust work ethic and a dedication to understanding and fairly adjudicating federal law that will assist me on the federal appellate bench, if confirmed.

2. During your hearing, Senator Kennedy asked you to discuss federal judges' authority to issue universal injunctions. You correctly noted that this is a highly debated legal question.

a. Has the U.S. Supreme Court ruled on the constitutionality of universal injunctions?

Response: To my knowledge, the Supreme Court has not directly spoken to this question. Injunctive relief, generally, is considered 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, 130 S. Ct. 2743, 2748 (2010).

I am aware that Justice Gorsuch and Justice Thomas have addressed nationwide or universal injunctions in separate opinions in separate cases, but I am not aware that this issue has been addressed conclusively in a Supreme Court majority opinion. For example, Justice Thomas' concurring opinion in *Trump v. Hawaii* noted that "[i]f district courts have any authority to issue universal injunctions, that authority must come from a statute or the Constitution. No statute expressly grants district courts the power to issue universal injunctions. So the only possible bases for these injunctions are a generic statute that authorizes equitable relief or the courts' inherent constitutional authority. Neither of those sources would permit a form of injunctive relief that is '[in]consistent with our history and traditions. In sum, universal injunctions are legally and historically dubious. If federal courts continue to issue them, this Court is duty bound to adjudicate their authority to do so.'" 138 S. Ct. 2392, 2425-29 (2018).

Most recently, in *Dept. of Homeland Sec. v. N.Y.*, Justice Gorsuch stated in his concurring opinion that he hopes the Supreme Court "might at an appropriate juncture take up some of the underlying equitable and constitutional questions raised by the rise of nationwide injunctions." 140 S. Ct. 599, 601 (2020).

b. Has the Seventh Circuit ruled on the constitutionality of universal injunctions?

Response: To my knowledge, the Seventh Circuit has not ruled on the constitutionality of universal injunctions. The Seventh Circuit has stated, though, that "both historical and current practice lends support to a determination that the courts possess the authority to impose injunctions that extend beyond the parties before the court. The propriety of such an injunction, in a given case, is another matter." *City of Chi. v. Barr*, 961 F.3d 882, 912-18 (7th Cir. 2020) (addressing historical context of universal injunctions, the consistency of universal injunctions with Supreme Court law, and the propriety of injunctive relief).

3. **In September 2019, you gave a speech in honor of Constitution Day in which you discussed the history of the Constitution, the amendment process, and the Constitution's role in judicial decisionmaking. You stated that the Constitution "breathes 'life'" into your work as a judge and that its language "permit[s] us to live out the true meaning of its doctrine and interpret it as a living document." You also noted that at the time the Constitution was written, you could not have served as a federal judge because, as a woman and a person of color, you were not deemed "a 'person' through the lens of 1787." In addition, you stated that "[b]ecause the Constitution is a breathing document, we 'the people' have to continue to give it life."**

   Please discuss how the Constitution can change over time. Is that what you were referring to when you stated that "we the people…give [the Constitution] life"?

   Response: I believe that the Constitution is an enduring document whose meaning can be applied to present day circumstances. As the Supreme Court observed, the Constitution is "intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs." *McCulloch v. Maryland*, 17 U.S. 316, 415 (1819). The Constitution does not change unless amended pursuant to the procedures set forth in Article V. If confirmed, I would follow Supreme Court and Seventh Circuit precedent in interpreting the Constitution. When I stated that "we" give the Constitution life, I was expressing our nation's ideal that the people are sovereign, and that the goal of American democracy is to have a government that is fair, just, and responsive to its people.

Senator Chuck Grassley, Ranking Member
Questions for the Record
Judge Doris L. Pryor
Judicial Nominee to the U.S. Court of Appeals for the Seventh Circuit

1. **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, 720-21 (1997), the Supreme Court held that substantive 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." A federal judge considering whether there were new unenumerated rights would be bound by this *Glucksberg* test.

2. **Should you be confirmed, what specific factors will you take into consideration when deciding whether to overturn circuit precedent?**

   Response: First, I would note that the Seventh Circuit could only overturn circuit precedent while sitting en banc, and en banc proceedings are generally disfavored unless either "en banc consideration is necessary to secure or maintain uniformity of the court's decisions" or "the proceeding involves a question of exceptional importance." Fed. R. App. P. 35. In addition, the Seventh Circuit requires a compelling reason to overturn circuit precedent. *McClain v. Retail Food Emps. Joint Pension Plan*, 413 F.3d 582, 586 (7th Cir. 2005). In *United States v. Thomas*, 27 F.4th 556, 559 (7th Cir. 2022), the Seventh Circuit identified some reasons that would justify overruling circuit precedent, including: "(1) when the circuit is an outlier and can save work for Congress and the Supreme Court by eliminating a conflict; (2) when overruling might supply a new line of argument that would lead other circuits to change their positions in turn; and (3) when prevailing doctrine works a substantial injury."

   If confirmed to the Seventh Circuit, I would consider these factors when determining whether there is a "compelling" reason to overturn circuit precedent.

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

   Response: I am not familiar with this statement, but I do not agree with it. As a sitting judge, my decisions are grounded in law and precedent, and not my personal beliefs. As a United States Magistrate Judge and as a circuit judge if I am confirmed, I will fairly and impartially, with an open mind, apply the law to the facts in every case, being careful to

adhere to precedent from the Seventh Circuit Court of Appeals and the United States Supreme Court.

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

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

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

   Response: I am not familiar with the referenced statement of Justice Jackson or the circumstances and application to which it was rendered. As the Supreme Court observed, the Constitution is "intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs." *McCulloch v. Maryland*, 17 U.S. 316, 415 (1819). The Constitution does not change unless amended pursuant to the procedures set forth in Article V. If confirmed, I would follow Supreme Court and Seventh Circuit precedent in interpreting the Constitution.

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

   Response: Yes. In *Pierce v. Soc'y of the Sisters of the Holy Names of Jesus and Mary*, the Supreme Court acknowledged that the Constitution provides parents and guardians with the "liberty…to direct the upbringing and education of children under their control." 268 U.S. 510, 534-35 (1925). In *Troxel v. Granville*, 530 U.S. 57, 66 (2000), the Supreme Court held that "the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children."

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

   Response: The funding of police departments and other support services is a policy determination that should be addressed by the legislature. As a sitting federal judge, and circuit judge nominee, it would not be appropriate for me to express an opinion on this matter.

8. **Are law enforcement partnerships key to preventing acts of terror?**

   Response: As a former Assistant United States Attorney who served as the National Security Chief for the U.S. Attorney's Office for the Southern District of Indiana, I was

responsible for ensuring the effective collaboration of numerous federal, state, and local law enforcement and other public safety officials to ensure protection of the district and prevention of terrorist plots and attacks.

Generally speaking, and being mindful that I cannot comment on issues that are pending or that might come before the court as a United States Magistrate Judge, I feel comfortable saying that I was proud of the law enforcement partnerships and relationships that I helped cultivate as an Assistant United States Attorney.

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

   Response: If confirmed to the Seventh Circuit, I would evaluate any appeal, including an appeal involving an individual challenging their detention based on the facts of the case before me and the applicable Supreme Court and Seventh Circuit precedent. In general, when federal district courts sentence criminal defendants, they do so pursuant to factors that Congress has specified in 18 U.S.C. § 3553(a), which includes the need for the sentence imposed "to protect the public from further crimes of the defendant.

10. **Is the right to petition the government a constitutionally protected right?**

    Response: Yes. The First Amendment provides that Congress shall make no law abridging "the right of the people … to petition the Government for redress of grievances." *See also, Borough of Duryea, Pa. v. Guarnieri*, 564 U.S. 379, 387 (2011) ("The right of access to courts for redress of wrongs is an aspect of the First Amendment right to petition the government.").

11. **What role should empathy play in sentencing defendants?**

    Response: When imposing a sentence, a judge's "empathy" is not one of the factors to be considered under 18 U.S.C. § 3553(a). Instead, the court is to consider: (1) the nature and circumstances of the offense and the history and characteristics of the defendant, (2) the need for the sentence imposed, (3) the kinds of sentences available, (4) the kinds of sentence and the sentencing range set forth in the Guidelines, (5) any pertinent policy statement, (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct, and (7) the need to provide restitution to any victims of the offense.

12. **Do you agree with the following statement: "Not everyone deserves a lawyer, there is no civil requirement for legal defense"?**

    Response: According to binding precedent, the Constitution guarantees an individual the right to counsel at all critical stages of criminal process. The Constitution does not

guarantee such a right in civil litigation. The United States District Court for the Southern District of Indiana, however, does have in place procedures to encourage attorneys to volunteer to represent indigent litigants in civil cases.

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

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

Response: As a United States Magistrate Judge, and circuit judge nominee, I am bound to apply all binding Supreme Court and Seventh Circuit precedent. As such, it is generally inappropriate for me to comment on whether any binding Supreme Court precedent was correctly decided. However, there are certain Supreme Court decisions that are so fundamental and widely accepted that they present an exception to this rule because they are unlikely to be relitigated. Consistent with the responses of other nominees, I believe *Brown v. Board of Education* was correctly decided.

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

Response: As a United States Magistrate Judge, and circuit judge nominee, I am bound to apply all binding Supreme Court and Seventh Circuit precedent. As such, it is generally inappropriate for me to comment on whether any binding Supreme Court precedent was correctly decided. However, there are certain Supreme Court decisions that are so fundamental and widely accepted that they present an exception to this rule because they are unlikely to be relitigated. Consistent with the responses of other nominees, I believe *Loving v. Virginia* was correctly decided.

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

Response: The Supreme Court overruled *Roe v. Wade* in *Dobbs v. Jackson Women's Health Organization*, No. 19-1392, 2022 WL 2276808 (U.S. June 24, 2022). As a United States Magistrate Judge, I am bound to apply all binding Supreme Court and Seventh Circuit precedent. As a sitting United States Magistrate Judge, and circuit judge nominee, it is inappropriate for me to comment on whether I believe a Supreme Court case is correctly decided.

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

Response: The Supreme Court overruled *Planned Parenthood v. Casey* in *Dobbs v. Jackson Women's Health Organization*, No. 19-1392, 2022 WL 2276808 (U.S. June 24, 2022). As a United States Magistrate Judge, I am bound to apply all binding Supreme Court and Seventh Circuit precedent. As a sitting United States Magistrate Judge, and circuit judge nominee, it is inappropriate for me to comment on whether I believe a Supreme Court case is correctly decided.

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

Response: As a United States Magistrate Judge and, if confirmed, a circuit judge, I will faithfully apply all binding Supreme Court and Seventh Circuit precedent. Otherwise, as a sitting United States Magistrate Judge and circuit judge nominee, it is inappropriate for me to comment on whether I believe a Supreme Court case is correctly decided.

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

Response: As a United States Magistrate Judge and, if confirmed, a circuit judge, I will faithfully apply all binding Supreme Court and Seventh Circuit precedent. Otherwise, as a sitting United States Magistrate Judge and circuit judge nominee, it is inappropriate for me to comment on whether I believe a Supreme Court case is correctly decided.

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

Response: As a United States Magistrate Judge and, if confirmed, a circuit judge, I will faithfully apply all binding Supreme Court and Seventh Circuit precedent. Otherwise, as a sitting United States Magistrate Judge and circuit judge nominee, it is inappropriate for me to comment on whether I believe a Supreme Court case is correctly decided.

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

Response: As a United States Magistrate Judge and, if confirmed, a circuit judge, I will faithfully apply all binding Supreme Court and Seventh Circuit precedent. Otherwise, as a sitting United States Magistrate Judge and circuit judge nominee, it is inappropriate for me to comment on whether I believe a Supreme Court case is correctly decided.

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

Response: As a United States Magistrate Judge and, if confirmed, a circuit judge, I will faithfully apply all binding Supreme Court and Seventh Circuit precedent. Otherwise, as a sitting United States Magistrate Judge and circuit judge nominee, it is inappropriate for me to comment on whether I believe a Supreme Court case is correctly decided.

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

Response: As a United States Magistrate Judge and, if confirmed, a circuit judge, I will faithfully apply all binding Supreme Court and Seventh Circuit precedent. Otherwise, as a sitting United States Magistrate Judge and circuit judge nominee,

it is inappropriate for me to comment on whether I believe a Supreme Court case is correctly decided.

14. **Is threatening Supreme Court justices right or wrong?**

    Response: It is illegal under federal law to threaten government officials, including United States Supreme Court Justices, if the threat meets the requirements of 18 U.S.C. § 115.

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

    Response: 18 U.S.C. § 1507 makes it unlawful to picket or parade in or near a courthouse, building, or residence occupied or used by a judge, juror, witness, or court officer, with the intent of interfering with, obstructing, or impeding the administration of justice or with the intent to influence a judge, juror, witness, or court officer in the discharge of his or her duty.

16. **Under Supreme Court precedent, is 18 USC § 1507 constitutional on its face?**

    Response: To my knowledge, the Supreme Court has not addressed the constitutionality of 18 U.S.C. § 1507. In *Cox v. State of La.*, the Supreme Court held that a Louisiana statute modeled after 18 U.S.C. § 1507 was "on its face [] a valid law dealing with conduct subject to regulation so as to vindicate important interests of society and [] the fact that free speech is intermingled with such conduct does not bring with it constitutional protection." 379 U.S. 559, 560-64 (1965).

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

    Response: "Fighting words" refer to "those personally abusive epithets which, when addressed to the ordinary citizen, are, as a matter of common knowledge, inherently likely to provoke violent reaction." *Cohen v. California*, 403 U.S. 15, 20 (1971); *see also Chaplinsky v. State of New Hampshire*, 315 U.S. 568 (1942). The *Cohen* Court went on to explain that words of a provocative nature do not rise to the level of unprotected fighting words unless they are directed to a specific person and likely to provoke violent response. *Cohen*, 403 U.S. 20 ("No individual actually or likely to be present could reasonably have regarded the words on appellant's jacket as a direct personal insult. Nor do we have here an instance of the exercise of the State's police power to prevent a speaker from intentionally provoking a given group to hostile reaction.").

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

Response: A statement qualifies as a "true threat," and is unprotected by the First Amendment, "if it is 'a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.'" *Virginia v. Black*, 538 U.S. 343, 359 (2003).

19. **Please describe your understanding of Supreme Court and Seventh Circuit precedents concerning the permissibility of requiring prospective voters to show identification in order to vote.**

    Response: In *Crawford v. Marion County Election Board*, the Supreme Court held that laws requiring voters to present identification are not facially unconstitutional. 553 U.S. 181 (2008). *See Crawford v. Marion County Election Board*, 472 F.3d 949, 952 (7th Cir. 2007), *aff'd*, 553 U.S. 181 (2008) (Seventh Circuit held that requiring voters to present photo identification to vote in person, was not an undue burden on the right to vote). As a United States Magistrate Judge and, if confirmed, a circuit judge, I will faithfully apply all binding Supreme Court and Seventh Circuit precedent, including precedents concerning voter identification laws.

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

    Response: When evaluating a case, I start by reviewing the parties' briefs and arguments. Next, I carefully review the applicable statutes and caselaw to assess the matter before me, and to ensure that I have a full understanding of the particular substantive law at issue. Finally, I fairly and impartially apply the law to the established facts to render a decision. As a sitting United States Magistrate Judge, I swore an oath to fairly and impartially render decisions setting aside any personal preferences, biases, religious beliefs, or political ideologies.

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

    Response: No.

22. **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.

23. **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.

24. **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.

25. **Demand Justice is a progressive organization dedicated to "restor[ing] ideological balance and legitimacy to our nation's courts."**
    a. **Has anyone associated with Demand Justice requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**
    b. **Are you currently in contact with anyone associated with Demand Justice, including, but not limited to: Brian Fallon, Christopher Kang, Tamara Brummer, Katie O'Connor, Jen Dansereau, Faiz Shakir, and/or Stasha Rhodes?**
    c. **Have you ever been in contact with anyone associated with Demand Justice, including, but not limited to: Brian Fallon, Christopher Kang, Tamara Brummer, Katie O'Connor, Jen Dansereau, Faiz Shakir, and/or Stasha Rhodes?**

    Response: No.

26. **The Alliance for Justice is a "national association of over 120 organizations, representing a broad array of groups committed to progressive values and the creation of an equitable, just, and free society."**
    a. **Has anyone associated with Alliance for Justice requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**
    b. **Are you currently in contact with anyone associated with the Alliance for Justice, including, but not limited to: Rakim Brooks and/or Daniel L. Goldberg?**
    c. **Have you ever been in contact with anyone associated with Demand Justice, including, but not limited to: Rakim Brooks and/or Daniel L. Goldberg?**

    Response: No.

27. **Arabella Advisors is a progressive organization founded "to provide strategic guidance for effective philanthropy" that has evolved into a "mission-driven, Certified B Corporation" to "increase their philanthropic impact."**
    a. **Has anyone associated with Arabella Advisors requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**
    b. **Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund.**
    c. **Are you currently in contact with anyone associated with Arabella Advisors? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.**
    d. **Have you ever been in contact with anyone associated with Arabella Advisors? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.**

    Response: No.

28. **The Open Society Foundations is a progressive organization that "work[s] to build vibrant and inclusive democracies whose governments are accountable to their citizens."**
    a. **Has anyone associated with Open Society Foundations requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**
    b. **Are you currently in contact with anyone associated with the Open Society Foundations?**
    c. **Have you ever been in contact with anyone associated with the Open Society Foundations?**

    Response: No.

29. **Fix the Court is a "non-partisan, 501(C)(3) organization that advocates for non-ideological 'fixes' that would make the federal courts, and primarily the U.S. Supreme Court, more open and more accountable to the American people."**
    a. **Has anyone associated with Fix the Court requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**
    b. **Are you currently in contact with anyone associated with Fix the Court, including but not limited to: Gabe Roth, Tyler Cooper, Dylan Hosmer-Quint and/or Mackenzie Long?**

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

Response: No.

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

Response: No.

31. **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 January 24, 2022, staff for Senator Michael Braun contacted me regarding the vacancy on the United States Court of Appeals for the Seventh Circuit, and the following day, on January 25, 2022, met with me to discuss the possible nomination. On January 26, 2022, staff for Senator Todd Young contacted me and inquired whether I was interested in being considered for the nomination. On January 27, 2022, an official from the White House Counsel's Office contacted me to schedule a meeting to discuss the judicial vacancy on the Seventh Circuit Court of Appeals. On January 28, 2022, I met with attorneys from the White House Counsel's Office. Since that date, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On May 25, 2022, the President announced his intent to nominate me.

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

Response: I received these questions by email on July 20, 2022. Thereafter, I began preparing my responses, relying on my Senate Judiciary Questionnaire and, where necessary, conducting legal research to appropriately address questions. I shared my responses with employees of the Department of Justice, Office of Legal Policy, Judicial Nominations staff, who offered minor feedback. I then proceeded to finalize my answers.

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

Questions for the Record for Judge Doris Pryor, Nominee for the Seventh Circuit

I. Directions

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

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

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

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

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

To the extent that an answer depends on an ambiguity in the question asked, please state the ambiguity you perceive in the question, and provide multiple answers which articulate each possible reasonable interpretation of the question in light of the ambiguity.

II. Questions

1. **Is racial discrimination wrong?**

Response: Yes. Discrimination on the basis of race, pursuant to the many anti-discrimination statutes enacted by Congress, is illegal. *See, e.g.*, Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a)(1) the Fair Housing Act of 1968, 42 U.S.C. § 3605(a); Civil Rights Act of 1866, 42 U.S.C. § 1981. Moreover, the Fourteenth Amendment provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." The Supreme Court has held that race-based classifications are subject to strict scrutiny and are thus only permissible when narrowly tailored to achieve a compelling government interest.

2. **How would you define "judicial activism"? What decisions of the Supreme Court, in your opinion, were the product of judicial activism?**

Response: Black's Law Dictionary defines "judicial activism" as "[a] philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions, usu. With the suggestion that adherents of this philosophy tend to find constitutional violations and are willing to ignore governing texts and precedents." Black's Law Dictionary (11th ed. 2019). Judicial activism is contrary to Canon 3 of the Code of Conduct for United States Judges which provides that "a judge should perform the duties of the office fairly, impartially, and diligently."

3. **In comments you made about the late Justice Ginsburg, you commended her for "advocating from the bench." What did you mean by "advocating from the bench?"**

Response: I have never made comments commending Justice Ginsburg for "advocating from the bench." After reviewing my submission to the SJQ, I understand that this comment was included on a PowerPoint slide regarding a 2019 American Inn of Court presentation. On March 21, 2019, I was a co-presenter with eleven members of the McKinney-Shepard American Inn of Court discussing the professional legacy of Justice Ginsburg. Each presenter was responsible for developing and implementing PowerPoint slides that summarizes their two-minute talking points. My comments were limited to introductory remarks about each speaker and the areas of Justice Ginsburg's life that the team expected to cover. While discussing Justice Ginsburg's litigation career, one of the presenters represented that Justice Ginsburg advocated from the bench. This statement was not made by me nor did I assist in developing or crafting that PowerPoint slide. *See,* Pryor SJQ, Question 12(d), Co-Presenter, "The Notorious R.B.G – From Ascent to Dissent," McKinney-Shepard American Inn of Court.

   a. **If confirmed, do you plan to "advocate from the bench" in the Seventh Circuit?**

Response: As a sitting United States Magistrate Judge, and as a nominee to the Seventh Circuit Court of Appeals, it has been my judicial philosophy to approach each case with an open mind, to give all litigants a meaningful opportunity to be heard, and to apply the law fairly and impartially as interpreted by Supreme Court and Seventh Circuit precedent to the facts as established by the evidence in the record. Personal views or opinions have no relevance to nor impact upon judicial opinion.

b. **You have previously discussed what you referred to as the "Ginsburg Rule." What is that?**

Response: I have not previously discussed the "Ginsburg Rule." After reviewing my submission to the SJQ, I understand that this comment was included on a PowerPoint slide regarding a 2019 American Inn of Court presentation. On March 21, 2019, I was a co-presenter with eleven members of the McKinney-Shepard American Inn of Court discussing the professional legacy of Justice Ginsburg. Each presenter was responsible for developing and implementing PowerPoint slides that summarizes their two-minute talking points. My comments were limited to introductory remarks about each speaker and the areas of Justice Ginsburg's life that the team expected to cover. While discussing Justice Ginsburg's Supreme Court confirmation hearing, one of the presenters discussed the notion of the "Ginsburg Rule." This discussion was not given by me nor did I assist in developing or crafting the PowerPoint slides addressing the "Ginsburg Rule." *See,* Pryor SJQ, Question 12(d), Co-Presenter, "The Notorious R.B.G – From Ascent to Dissent," McKinney-Shepard American Inn of Court.

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

Response: In *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997), the Supreme Court held that substantive 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." A federal judge considering whether there were new unenumerated rights would be bound by this *Glucksberg* test.

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: As a sitting United States Magistrate Judge, my judicial philosophy has been to approach each case with an open mind, to give all litigants a meaningful opportunity to be heard, and to apply the law fairly and impartially to the facts as established by the evidence in the record, setting aside any personal views or opinions. I deeply respect the Supreme Court Justices for their judicial temperament, open-minded and rigorous

approach to the law. As a United States Magistrate judge, and circuit judge nominee, I have a clear duty to apply all Supreme Court and Seventh Circuit binding precedent, regardless of any particular Justice or Justices' philosophy.

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

Response: Black's Law Dictionary defines "living constitutionalism" as a doctrine in which "the Constitution should be interpreted and applied in accordance with the changing circumstances, an in particular, with changes in social values." Black's Law Dictionary (11ed. 2019). I have never applied a specific label related to a theory of constitutional interpretation to myself. If confirmed, I would faithfully apply all Supreme Court and Seventh Circuit binding precedent utilizing acceptable methods of constitutional and statutory construction.

a. **What prevents a "living constitution" from being arbitrary?**

Response: I believe that the Constitution is an enduring document whose meaning can be applied to present day circumstances. As the Supreme Court observed, the Constitution is "intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs." *McCulloch v. Maryland*, 17 U.S. 316, 415 (1819). The Constitution does not change unless amended pursuant to the procedures set forth in Article V. If confirmed, I would follow Supreme Court and Seventh Circuit precedent as applicable in interpreting the Constitution.

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

Response: As a sitting United States Magistrate Judge, I follow the interpretive methods set out in binding precedent from the Supreme Court and the Seventh Circuit. For example, I follow the Supreme I follow the Supreme Court's guidance that when interpreting the Constitution, the text and original meaning of a provision is an important consideration and, indeed, should be looked to first. *See, e.g.*, *United States v. Jones*, 565 U.S. 400 (2012) (Fourth Amendment); *District of Columbia v. Heller*, 554 U.S. 570 (2008) (Second Amendment); *Crawford v. Washington*, 541 U.S. 36 (2004) (Sixth Amendment). There are also instances when the Supreme Court has on occasion considered contemporary meaning (e.g., *Trop v. Dulles*, 356 U.S. 86 (1956) (determining whether punishment is cruel and unusual); *Miller v. California*, 413 U.S. 15 (1973) (definition of obscenity). I am bound by all Supreme Court and Seventh Circuit precedent.

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

Response: No. I believe that the Constitution is an enduring document whose meaning can be applied to present day circumstances. As the Supreme Court observed, the

Constitution is "intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs." *McCulloch v. Maryland*, 17 U.S. 316, 415 (1819). The Constitution does not change unless amended pursuant to the procedures set forth in Article V. If confirmed, I would follow Supreme Court and Seventh Circuit precedent as applicable in interpreting the Constitution.

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

Response: Yes. *Dobbs v. Jackson Women's Health Org.,* 142 S. Ct. 2228 (2022), is binding precedent. As a current magistrate judge, and if confirmed, Seventh Circuit Judge, I will follow this binding precedent.

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

Response: Yes. *New York Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022), is binding precedent. As a current magistrate judge, and if confirmed, Seventh Circuit judge, I will follow this binding precedent.

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

Response: Under the Bail Reform Act of 1984, 18 U.S.C. § 3142(e)(2), (3) Congress has enumerated various offenses that trigger a presumption in favor of detention – including drug offenses with a statutory maximum term of imprisonment of 10 years or more; crimes of violence; unlawful firearm offenses, and certain offenses involving a minor victim.

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

Response: As a United States Magistrate Judge, I am bound to apply all binding Supreme Court and Seventh Circuit precedent. In *United States v. Dominguez*, the Seventh Circuit discussed the "import of the presumption of dangerousness in § 3142(e)" as representing "Congressional findings that certain offenders,…, as a group are likely to continue to engage in criminal conduct undeterred either by the pendency of charges against them or by the imposition of monetary bond or other release conditions." 783 F.2d 702, 707 (7th Cir. 1986).

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: Yes. "Under the Free Exercise Clause of the First Amendment of the United States Constitution, made applicable to state and local governments by the Fourteenth

Amendment, no law may prohibit the free exercise of religion." *Civil Liberties for Urban Believers v. City of Chicago*, 342 F.3d 752, 762–63 (7th Cir. 2003). When a law puts a restraint on the exercise of religious freedom, the Supreme Court instructs the lower courts to first determine whether the law being challenged is "neutral and of general applicability." *Vision Church v. Vill. of Long Grove*, 468 F.3d 975, 996 (7th Cir. 2006) (citing *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531 (1993)). If the law fails either prong, it "must be justified by a compelling governmental interest and must be narrowly tailored to advance that interest." *Id.*

In addition, under the Religious Freedom Restoration Act, the federal government is restricted "from substantially burdening a person's exercise of religion even if the burden results from a rule of general applicability unless the Government demonstrates that application of the burden to the person (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." *Burwell v. Hobby Lobby Stores, Inc*., 573 U.S. 682, 705, 134 S. Ct. 2751, 2767, 189 L. Ed. 2d 675 (2014) (law violates the RFRA that requires a closely held corporation provide insurance coverage for contraceptives that violates its owners' religious beliefs).

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

Response: In *Employment Division v. Smith*, 494 U.S. 872 (1990), the Supreme Court held that the Free Exercise Clause could not be used to challenge a neutral law of general applicability. Thus, a plaintiff may carry the burden of proving a free exercise violation by showing that a government entity has burdened his sincere religious practice pursuant to a policy that is not "neutral" or "generally applicable." *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2421-22 (2022). If the plaintiff demonstrates that the burden is not neutral or generally applicable, the Court will find a First Amendment violation unless the government can satisfy "strict scrutiny" by demonstrating its course was justified by a compelling state interest and was narrowly tailored in pursuit of that interest. *Id.* at 2422.

The Supreme Court has stated that neutrality and general applicability are interrelated; "failure to satisfy one requirement is a likely indication that the other has not been satisfied." *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531 (1993). In *Masterpiece Cakeshop, Ltd. V. Colorado Civil Rights Commission*, 138 S. Ct. 1719, 1729 (2018), the Supreme Court explained that a law is not neutral "if the object of [the] law is to infringe upon or restrict practices because of their religious motivation." *Id.* at 533. If evidence of impermissible hostility toward one's sincere religious beliefs is found, the law is not neutral. *Masterpiece Cakeshop, Ltd. V. Colorado Civil Rights Commission*, 138 S. Ct. 1719, 1729 (2018). Additionally, in *Tandon v. Newsom,* the Supreme Court explained that "government regulations are not neutral and general applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat *any* comparable secular activity more favorably than religious exercise." 141 S. Ct. 1294, 1296 (2021).

As a United States Magistrate Judge and, if confirmed, circuit judge, I will continue to apply Supreme Court and Seventh Circuit precedent in considering Free Exercise claims that may arise.

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), religious institutions challenged then-Governor Cuomo's Executive Order which restricted attendance at religious services to no more than 10 people in red zones and no more than 25 people in orange zones. *Id.* at 65-66. The Supreme Court held that the religious entities were entitled to a preliminary injunction. *Id.* at 69. The Court reasoned that the religious entities were likely to succeed on the merits because they had made a strong showing that the Executive Order violated "the minimum requirement of neutrality" to religion as religious institutions were drastically limited in their capacity while essential and even non-essential businesses were permitted to decide for themselves how many persons to admit. *Id.* at 66. Having found the Executive Order not "neutral," the Court also determined that the challenged restrictions were not narrowly tailored to the compelling state interest of stemming the spread of COVID-19. *Id.* at 67. Next, the Court determined that the challenged restrictions would cause irreparable harm because the loss of First Amendment freedoms, even for minimal periods of time, unquestionably constitutes irreparable injury. *Id.* at 67 (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). The Court also found that there had been no showing that granting the preliminary injunction would harm the public. *Id.* at 68.

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

Response: In *Tandon v. Newsom,* individuals wishing to gather for at-home religious exercise challenged California's COVID-19 restrictions on private gatherings. 141 S. Ct. 1294 (2021). The Supreme Court found the Free Exercise Clause was invoked by the restrictions because the government regulations treated comparable secular activity more favorable than religious activity. The Supreme Court held "government regulations are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they any comparable secular activity more favorably than religious exercise." 141 S. Ct. at 1296 (2021).

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

Response: Yes. *See, e.g.*, *Kennedy v. Bremerton Sch. Dist*., 142 S. Ct. 2407, 2421 (2022) (noting that the Free Exercise Clause "protects not only the right to harbor religious beliefs inwardly and secretly. It does perhaps its most important work by protecting the ability of those who hold religious beliefs of all kinds to live out their faiths in daily life through 'the performance of (or abstention from) physical acts.'")

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 (2018), the Plaintiff informed a same-sex couple that he could not make their wedding cake because of his religious opposition to same-sex marriages. *Id.*at 1723. The couple filed a charge with the Defendant, Colorado Civil Rights Commission ("Commission"), alleging violation of Colorado's Anti-Discrimination Act. *Id.* The Commission determined that plaintiff had violated the Act, and ordered the Plaintiff to cease and desist from discriminating against same-sex couples by refusing to sell them wedding cakes or any other product the plaintiff would sell to heterosexual couples. *Id.* at 1726. The Commission also ordered additional remedial measures and required the plaintiff to prepare quarterly compliance reports. *Id.*

The Supreme Court found a violation of the Free Exercise Clause based on animus against religion expressed by some members of the Colorado Civil Rights Commission. *Id.* at 1724. The Court noted that "if [the Government] is to respect the Constitution's guarantee of free exercise, [it] cannot impose regulations that are hostile to the religious beliefs of affected citizens and cannot act in a manner that passes judgment upon or presupposes the illegitimacy of religious beliefs and practices." *Id.* at 1731. The Court held that a facially neutral law that is generally applicable violates a person's right to the free exercise of religion where there is evidence that the law was motivated by hostility to certain religious beliefs and has been used to target certain religious beliefs.

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: Yes. In *Frazee v. Illinois Dept. of Empl. Sec.*, 489 U.S. 829, 833 (1989), the Supreme Court held that sincere "beliefs rooted in religion" are protected by the Free Exercise Clause.

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

Response: In *Thomas v. Review Board of the Indiana Employment Security Division*, the Supreme Court ruled that an individual could claim a religious belief even though it was inconsistent with the doctrines of his or her religion. 450 U.S. 707 (1981). Moreover, in *Frazee v. Illinois Dept. of Empl. Sec.*, 489 U.S. 829, 833 (1989), the Supreme Court found it immaterial that the individual was not a

member of an organized church, sect, or denomination. The Court found his sincere religious belief was impermissibly burden by the denial of benefits, thus for lower courts, the analysis centers around whether the religious belief is "sincere."

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

Response: Please see my response to 18(a).

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

Response: As a sitting Magistrate Judge and as a circuit judge nominee, it would not be appropriate for me to comment on the official position of a religion.

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 Sch. v. Morrissey-Berru*, teachers at Catholic elementary schools brought claims under the Age Discrimination in Employment Act and Americans with Disabilities Act after their employment was terminated. 140 S. Ct. 2049 (2020). In both instances, the lower court granted summary judgment in the school's favor under the ministerial exception, and the Ninth Circuit reversed. *Id.* at 2058-59. The Court, reaffirming its holding in *Hosanna-Tabor*, held that the ministerial exception foreclosed the employment discrimination claims brought by the teachers. The Court explained that the Ninth Circuit had erred by employing a rigid, distorted analysis of the factors recognized in *Hosanna-Tabor. Id.* at 2066-68. The Court stated that while factors, such as title, religious training, and holding oneself out as a minister of the church, may be important in determining whether the ministerial exception applies, courts should take all relevant circumstances into account. *Id.* at 2063-64, 2067. The Court also articulated that "[w]hat matters, at bottom, is what an employee does." *Id.* at 2066. Finding that abundant record evidence demonstrated that the teachers performed vital religious duties, the Court concluded that the teachers qualified for the ministerial exception recognized in *Hosanna-Tabor. Id.*

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 (2001), the Supreme Court

applied strict scrutiny to invalidate a city 's refusal to renew its foster care contract with Catholic Social Services (CSS) unless CSS, despite its religious objection to doing so, agreed to certify same-sex couples as foster parents. Utilizing *Employment Division v. Smith*, the Court first looked to determine whether the law was neutral and generally applicable. The Supreme Court found because the city in its contract retained the authority to make exceptions to the same-sex-couples requirement, the law was no longer one of general applicability.

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

Response: In *Carson v. Makin*, Maine offered its citizens "tuition assistance payments for any family whose school district does not provide a public secondary school." *Carson v. Makin*, 142 S. Ct. 1987, 1997 (2022). The parents of secondary school students filed §1983 actions against the Commissioner of Maine Department of Education, challenging Maine's law which required parent-selected private schools be "nonsectarian" in order to be approved for tuition assistance. Finding the law effectively penalized the free exercise of religion, the Supreme Court, in keeping with its reasoning in *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 and *Espinoza v. Montana Department of Revenue*, 140 S. Ct. 2246, applying strict scrutiny invalidated Maine's law.

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

Response: In *Kennedy v. Bremerton School District*, a high school football coach lost his job at Bremerton School District after he knelt down at midfield after games to offer personal prayers. Specifically, after learning of Kennedy's religious practices in September 2015, the school district sent Kennedy a letter instructing Kennedy to avoid (1) providing post-game "inspirational talks that included overtly religious references" and (2) leading students and coaches in pre-game prayer, out of concern that Kennedy's actions may be perceived as endorsement by the school district. In October 2015, Kennedy, through counsel, asked to be allowed to say a short, private prayer mid-field after the game was over and the players had left the field. The district forbade such conduct, judging it would lead it to violate the Establishment Clause. On October 16, 23, and 26, Kennedy engaged in post-game, mid-field prayer. Shortly thereafter, the district placed Kennedy on paid administrative leave and prohibited him from participating in any capacity in football program activities. In November 2015, the district advised against rehiring Kennedy on the basis that he failed to follow district policy. The coach sued alleging that the school district's actions violated the First Amendment's Free Speech and Free Exercise Clauses.

First, the Supreme Court found the coach had proven a Free Exercise Clause violation by showing that the school district had burdened his sincere religious practice pursuant to a policy that was not "neutral" or "generally applicable." Next, to account for the

complexity associated with the interplay between free speech rights and government employment, the Court employed a two-step process involving *Pickering v. Bd. of Educ. of Twp. High Sch. Dist. 205, Will Cty*., 391 U.S. 563 (1968), and *Garcetti v. Ceballos*, 547 U.S. 410 (2006). Applying the two-step process, the Court determined that the coach had engaged in private, not government, speech – the coach's prayers did not owe their existence to his responsibilities as a public employee; the prayers occurred during the post-game period when coaches were free to attend briefly to personal matters; and the coach prayed when students were engaged in other activities. *Id.* at *11. Relying on the long abandoned *Lemon v. Kurtzman*, 403 U.S. 602 (1971) test and its progeny, the school district argued that by continuing to permit the coach's midfield prayers it ran afoul of the Establishment Clause. Relying on historical practices and understandings of the Establishment Clause, the Supreme Court rejected this argument finding the school district had violated the coach's Free Speech rights.

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

Response: In *Mast v. Fillmore County*, a group of Amish sought an exemption from a 2013 Fillmore County ordinance requiring homes to have a modern septic system for the disposal of gray water. 141 S. Ct. 2430 (2021). The trial court sided with the Fillmore requiring the Amish to install modern septic systems. Agreeing with the majority to remand the case to the state in light of *Fulton v. Philadelphia,* 141 S. Ct. 1868 (2021), Justice Gorsuch, in his concurring opinion, explained on remand the state should examine its application of the Religious Land Use and Institutionalized Persons Act to ensure the government was not infringing sincerely held religious beliefs and practices except as a last resort. Specifically, Justice Gorsuch explained that RLUIPA required the state to apply strict scrutiny to determine whether the county's regulation was necessary to both serve a "compelling" governmental interest and that it was "narrowly tailored" to achieve this end. Justice Gorsuch found the county and lower courts had "erred by treating the County's general interest in sanitation regulations as "compelling" without reference to the specific application of those rules to this community." 593 U. S., at ___ (slip op., at 14). In addition, Justice Gorsuch further noted that the county had failed to give "due weight" to the Amish communities proposed alternatives. Instead, county officials had subjected the Amish to threats of reprisals, attacked the sincerity of their faith, and displayed "precisely the sort of bureaucratic inflexibility RLUIPA was designed to prevent."

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

Response: As a sitting United States Magistrate Judge it would be improper for me to opine on a hypothetical that may ultimately come before the court.

25. **In 2015, you delivered a speech in which you urged legal professionals, administrators, and law professors to bring "diversity and inclusion into the office" and "embrace a cultural shift" in work environments. 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. In addition, I am not aware of the United States District Court for the Southern District of Indiana, the Seventh Circuit Court of Appeals, the Administrative Office of the United States Courts, or the Federal Judicial Center providing this manner of training.

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

Response: No. In addition, I am not aware of the United States District Court for the Southern District of Indiana, the Seventh Circuit Court of Appeals, the Administrative Office of the United States Courts, or the Federal Judicial Center providing this manner of training.

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. In addition, I am not aware of the United States District Court for the Southern District of Indiana, the Seventh Circuit Court of Appeals, the Administrative Office of the United States Courts, or the Federal Judicial Center providing this manner of training.

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

Response: No. In addition, I am not aware of the United States District Court for the Southern District of Indiana, the Seventh Circuit Court of Appeals, the Administrative Office of the United States Courts, or the Federal Judicial Center providing this manner of training.

26. **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: Yes. In addition, I am not aware of the United States District Court for the Southern District of Indiana, the Seventh Circuit Court of Appeals, the Administrative Office of the United States Courts, or the Federal Judicial Center providing this manner of training.

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

Response: Yes. I consider a variety of factors when hiring law clerks including class rank, journal experience, years of experience, and writing samples.

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

Response: As a sitting United States Magistrate Judge, a circuit judge nominee, it would be inappropriate for me to opine on the constitutionality of the decision of considering skin color or sex when making a political appointment.

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

Response: As a sitting United States Magistrate Judge, a circuit judge nominee, it would be inappropriate for me to opine on this highly debated political topic. As a former federal prosecutor, I worked tirelessly to ensure the laws of this country were fairly and equally enforced.

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

Response: The size of the Supreme Court is a decision for Congress to make. *See* U.S. Const. art. III, § 1. As a sitting United States Magistrate Judge, and judicial nominee, it is improper for me to comment on this policy question. My role is to evaluate the facts of the specific case before me and apply the governing Supreme Court and Seventh Circuit precedent to those facts.

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

Response: No.

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

Response: In *District of Columbia v. Heller*, 554 U.S. 570, 592 (2008), the Supreme Court explained that the text and historical background of the Second Amendment guarantees an "individual right to possess and carry weapons in case of confrontation." *Id.* at 592. The Supreme Court concluded that the Second Amendment prohibited the infringement of a preexisting right to keep and bear arms and that that right was not limited to military usages, but included all traditionally lawful uses of arms, including

self-defense. *Id.* at 628.

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

Response: In *District of Columbia v. Heller*, the Supreme Court held that the Second Amendment prohibited the District of Columbia from banning the possession of handguns in the home for self-defense. 554 U.S. 570 (2008). In *McDonald v. City of Chi.*, the Supreme Court held that the Second Amendment right to keep and bear arms recognized in *Heller* also applies to the States through the Fourteenth Amendment's due process clause. 561 U.S. 742 (2010). In *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, the Supreme Court held that the Second Amendment, as incorporated against the states, protects an individual's right to carry a handgun for self-defense outside the home. 142 S. Ct. 2111 (2022).

As a sitting Untied States Magistrate Judge, and a circuit judge nominee, it would not be appropriate for me to comment on or prematurely rule on hypothetical situations that may come before the Court. I will follow all binding Supreme Court and Seventh Circuit precedent with respect to claims of the right to bear arms.

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

Response: Yes. In *District of Columbia v. Heller*, the Supreme Court recognized that the ability to own a firearm is a personal civil right. 554 U.S. 570, 595 (2008) ("There seems to us no doubt, on the basis of both text and history, that the Second Amendment conferred an individual right to keep and bear arms.").

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

Response: In *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, the Supreme Court held that the Second Amendment, as incorporated against the states, protects an individual's right to carry a handgun for self-defense outside the home. 142 S. Ct. 2111 (2022).

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

Response: In *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, the Supreme Court held that the Second Amendment, as incorporated against the states, protects an individual's right to carry a handgun for self-defense outside the home. 142 S. Ct. 2111 (2022).

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

Response: As the Seventh Circuit explained, "[u]nder our system of separation of powers, prosecutors retain broad discretion to enforce criminal laws because they are required to help the President "take Care that the Laws be faithfully executed." *United States v. Scott*, 631 F.3d 401, 406 (7th Cir. 2011) (citing U.S. Const., Art. II, § 3). In *Wayte v. United States*, the Supreme Court described the limited nature of judicial review over prosecutorial discretion:

> In our criminal justice system, the Government retains "broad discretion" as to whom to prosecute. *United States v. Goodwin*, 457 U.S. 368, 380, n. 11 (1982) (internal citations omitted). "[S]o long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion." *Bordenkircher v. Hayes*, 434 U.S. 357, 364, 98 S. Ct. 663, 668, 54 L.Ed.2d 604 (1978). This broad discretion rests largely on the recognition that the decision to prosecute is particularly ill-suited to judicial review. Such factors as the strength of the case, the prosecution's general deterrence value, the Government's enforcement priorities, and the case's relationship to the Government's overall enforcement plan are not readily susceptible to the kind of analysis the courts are competent to undertake. Judicial supervision in this area, moreover, entails systemic costs of particular concern. Examining the basis of a prosecution delays the criminal proceeding, threatens to chill law enforcement by subjecting the prosecutor's motives and decision-making to outside inquiry, and may undermine prosecutorial effectiveness by revealing the Government's enforcement policy. All these are substantial concerns that make the courts properly hesitant to examine the decision whether to prosecute.

470 U.S. at 607.

As a sitting United States Magistrate Judge, and a circuit judge nominee, I will be guided by the binding precedent of the Supreme Court and the Seventh Circuit, when considering matters of prosecutorial discretion.

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

Response: If confirmed, and this matter came before me, I would faithfully apply all Supreme Court and Seventh Circuit binding precedent when considering matters of prosecutorial discretion.

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

Response: No. The Federal Death Penalty Act, codified at 18 U.S.C. § 3591 *et seq.*, is an act of Congress, which the President has no constitutional authority to unilaterally repeal. Under Article II, Section 2 of the Constitution, however, the President does have the power to grant reprieves and pardons for offenses against the United States, except in

cases of impeachment.

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, 2487 (2021), the Supreme Court concluded that the Centers for Disease Control and Prevention could not, under its authority to adopt measures necessary to prevent the spread of disease, institute a nationwide eviction moratorium in response to the COVID–19 pandemic. The Court found the statute's language a "wafer-thin reed" on which to rest such a measure, given "the sheer scope of the CDC's claimed authority," its "unprecedented" nature, and the fact that Congress had failed to extend the moratorium after previously having done so. *West Virginia v. Environmental Protection Agency*, 142 S. Ct. 2587, 2608 (2022).

Senator Josh Hawley
Questions for the Record

Judge Doris Pryor
Nominee, U.S. Court of Appeals for the Seventh Circuit

1. **In a speech you delivered at Indiana University Law School, you described what happened in 2014 in Ferguson, Missouri as "a battle," and that a small group of Ferguson citizens "forced the hand of social justice." Do you believe violence can ever be an acceptable tool to "forc[e] the hand of social justice"?**

   Response: On April 9, 2015, I gave the keynote address for the Indiana University McKinney School of Law Black Law Students Association and Hispanic Law Society Third Annual Diversity and Alumni Dinner and Reception. The student committee's selected theme was "A Dream Deferred: A Dialogue Regarding Today's Social Justice Movement." In my speech, I discussed the historical significance and important guiding principles of Dr. Martin Luther King's work during the Civil Rights Movement to my life and professional career.

   In the speech, I equated the influence of Dr. King's words at the March on Washington, which unleashed a worldwide demonstration for racial equality, with the power of a small group of Ferguson citizens who "forced the hand of social justice [by] starting a national conversation on race and policing around the nation." *See,* Pryor SJQ, Question 12(d), Keynote Speaker, "A Dream Deferred: A Dialogue Regarding Today's Social Justice Movement," Third Annual Diversity and Alumni Dinner and Reception, Indiana University McKinney School of Law Black Law Students Association and Hispanic Law Society, Indianapolis, Indiana. Speech supplied. At no time did I suggest or state that I supported violence nor have I ever done so. Indeed, a hallmark of Dr. King's work was his lifelong commitment to non-violence.

   Finally, I would note that in *United States v. Grace*, 461 U.S. 171, 176 (1983), the Supreme Court explained that peaceful protest involving "speech" is protected by the First Amendment. It is longstanding Supreme Court precedent, however, that violent demonstrations "lose their protected quality as expression under the First Amendment." *Grayned v. City of Rockford*, 408 U.S. 104, 116 (1972).

   As a United States Magistrate Judge, and circuit judge nominee, I have a clear duty to apply all Supreme Court and Seventh Circuit binding precedent.

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

   Response: Yes. *Dobbs v. Jackson Women's Health Org.,* 142 S. Ct. 2228 (2022), is binding precedent. As a United States Magistrate Judge and, if confirmed, a circuit judge, I will faithfully apply all binding Supreme Court and Seventh Circuit precedent.

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

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

      Response: As a sitting United States Magistrate Judge, my judicial philosophy has been to approach each case with an open mind, to give all litigants a meaningful opportunity to be heard, and to fairly and impartially apply the law to the facts as established by the evidence in the record, setting aside any personal views or opinions. I deeply respect the Supreme Court Justices for their judicial temperament, open-minded and rigorous approach to the law. As a United States Magistrate judge, and circuit judge nominee, I have a clear duty to apply all Supreme Court and Seventh Circuit binding precedent.

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

      Response: Please see my response to Question 3(a).

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

   Response: The Seventh Circuit, in recognizing Supreme Court precedent, has noted that "federal courts have a strict duty to exercise the jurisdiction conferred upon them by Congress." *International College of Surgeons v. City of Chicago*, 153 F.3d 356, 359 (7th Cir.1998) (citing *Quackenbush v. Allstate Ins. Co*., 517 U.S. 706, 716 (1996). Under this auspice, the Seventh Circuit has found the doctrine of abstention to be "an extraordinary and narrow exception" to the duty of a district court to adjudicate controversies properly before it and that it may be utilized only in "exceptional circumstances." *International College of Surgeons*, 153 F.3d at 359.

   The Seventh Circuit has recognized the following abstention doctrines:

Colorado River abstention doctrine: The Seventh Circuit has explained that the *Colorado River* doctrine, which allows a federal court to stay or dismiss a suit in federal court when a concurrent state court case is underway, is permissible "only under exceptional circumstances and if it would promote 'wise judicial administration.'" *Freed v. J.P. Morgan Chase Bank, N.A*., 756 F.3d 1013, 1018 (7th Cir. 2014) (quoting *Colorado River*, 424 U.S. at 817–18). In an effort to conserve both state and federal judicial resources and prevent inconsistent results, the Seventh Circuit instructs the lower courts to engage in a two-step approach when considering whether to employ the *Colorado River* abstention doctrine. *Id.* at 1018. First, the court inquires "whether the state and federal court actions are parallel." *Id*. If the proceedings are not parallel, *Colorado River* abstention must be denied. *Id*. If the proceedings are parallel, the court will then weigh ten non-exclusive factors to determine whether abstention is proper, including: (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.*

Burford abstention doctrine: In applying the *Burford* abstention doctrine, the Seventh Circuit has advised that federal courts should abstain from deciding an unsettled question of state law that relates to a complex state regulatory scheme. *International College of Surgeons*, 153 F.3d at 360. There are two narrow situations in which federal courts may abstain under this doctrine: (1) when it is faced with "difficult questions of state law" that implicate significant state policies; or (2) when concurrent federal jurisdiction would "be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern." *Adkins v. VIM Recycling, Inc.*, 644 F.3d 483, 504 (7th Cir. 2011). Determining whether to abstain under *Burford* requires the court to make a fact-intensive inquiry. *General Ry. Signal Co. v. Corcoran*, 921 F.2d 700, 709 (7th Cir. 1991). In making such an inquiry, the court should consider (1) whether the suit is based on a cause of action which is exclusively federal; (2) whether difficult or unusual state laws are at issue; (3) whether there is a need for coherent state doctrine in the area; and (4) whether state procedures indicate a desire to create special state forums to adjudicate the issues presented. *Id.* (citing *Burford v. Sun Oil Co*., 319 U.S. at 325–327 (1943)).

Younger abstention doctrine: The Seventh Circuit has found the *Younger* abstention doctrine to apply and restrict federal courts from exercising jurisdiction in "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).

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

Rooker-Feldman abstention doctrine: The Seventh Circuit has explained that the lower federal courts do not have subject matter jurisdiction to review state court civil decisions. *Edwards v. Illinois Bd. of Admissions to Bar*, 261 F.3d 723, 728 (7th Cir. 2001). Instead, plaintiffs must instead seek review through the state court system and, if necessary, petition the United States Supreme Court for a writ of certiorari. *Id.* In determining whether the *Rooker-Feldman* abstention doctrine applies, court are instructed to ask "whether the injury alleged by the federal plaintiff resulted from the state court judgment itself or is distinct from that judgment. If it is the former, then the federal courts lack subject matter jurisdiction, even if the state court judgment was erroneous or unconstitutional. If the injury alleged by the federal plaintiff is distinct from the state court judgment and not inextricably intertwined with it, the *Rooker–Feldman* doctrine [would] not apply." *Id.* at 729 (internal citations omitted).

Ecclesiastical abstention doctrine: The Seventh Circuit recognizes that the First Amendment's prohibition on abridging the free exercise of religion gives rise to ecclesiastical abstention doctrine, which forbids courts from involving themselves in matters of religious discipline, faith, internal governance, customs, rules, or law. *Korte v. Sebelius*, 735 F.3d 654, 678 (7th Cir. 2013). The Seventh Circuit has found "from the Establishment Clause and the Free Exercise Clause flows the ministerial exception, which ensures that the authority to select and control who will minister to the faithful is the church's alone." *Demkovich v. St. Andrew the Apostle Par., Calumet City*, 3 F.4th 968, 975 (7th Cir. 2021) (citing *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, 565 U.S. 171, 194–95 (2012) (quoting *Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church in North America*, 344 U.S. 94, 119 (1952)). In the Seventh Circuit, the "ministerial exception" operates as an affirmative defense to employment discrimination claims which hinges on the

function of the employee and the need to safeguard all faiths. *Demkovich*, 3 F.4th at 977.

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

   Response: No.

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

      Response: Please see my response to Question 5.

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

   Response: In interpreting constitutional provisions, the Supreme Court has recognized the importance that the original public meaning plays in interpretation of the provision. For instance, in *District of Columbia v. Heller*, the Court, noted that in interpreting the text, the Court is guided by the principle that "the Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning." 554 U.S. 570, 576 (2008). As a United States Magistrate Judge, and circuit judge nominee, I am bound to apply all binding Supreme Court and Seventh Circuit precedent.

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

   Response: As a United States Magistrate Judge, when interpreting statutes, I follow binding precedent where a federal statutory or regulatory provision has been interpreted by the Supreme Court or the Seventh Circuit. If there is no binding precedent, and as instructed by the Supreme Court and Seventh Circuit, I begin with the plain language of the pertinent statute or regulation, including the statutory definitions. *Exxon Mobil Corp. v. Allapattah Servs., Inc*., 545 U.S. 546, 568 (2005) (a lower court judge must first look at the statutory text because "the authoritative statement is the statutory text, not the legislative history or any other extrinsic material."). The Supreme Court has explained that with statutory construction, "the starting point for interpreting a statute is the language of the statute itself." *Consumer Prod. Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980). *See also Bostock v. Clayton Cnty., Ga.*, 140 S. Ct. 1731, 1749 (2020). If the meaning is "unambiguous and 'the statutory scheme is coherent and consistent,'" then "the inquiry ceases." *Kingdomware Techs., Inc. v. United States*, 579 U.S. 162, 171 (2016).

The Supreme Court has instructed that federal courts "do not resort to legislative history to cloud a statutory text that is clear." *Ratzlaf v. United States*, 510 U.S. 135, 147–48 (1994); *see also Milner v. Dep't of the Navy*, 562 U.S. 562, 574 (2011) ("Legislative history, for those who take it into account, is meant to clear up ambiguity, not create it."). If the text is ambiguous, the Seventh Circuit has held that resorting to the legislative history may be necessary. *Five Points Rd. Joint Venture v. Johanns*, 542 F.3d 1121, 1128 (7th Cir. 2008). Although the Supreme Court has not gone so far as to deem "legislative history inherently unreliable in all circumstances," it has cautioned, however, that "legislative history is itself often murky, ambiguous, and contradictory." *Exxon Mobil Corp*., 545 U.S. at 568-69. The Supreme Court has, however, recognized that legislative history may be useful for a different purpose, such as to "ferret out shifts in linguistic usage or subtle distinctions between literal and ordinary meaning." *Bostock*, 140 S. Ct. at 1750. As a United States Magistrate Judge, I adhere to binding precedent guiding that legislative history is to be consulted if and only if the statutory text in question is ambiguous.

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

Response: Please see my response to 7.

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

Response: I am not aware of any Supreme Court case consulting the laws of foreign nations when interpreting the provisions of the U.S. Constitution. As a United States Magistrate Judge and, if confirmed, circuit judge, I will continue to apply Supreme Court and Seventh Circuit precedent in considering constitutional interpretation.

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8. 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: In *Baze v. Rees*, the Supreme Court stated that "[s]imply because an execution method may result in pain, either by accident or as an inescapable consequence of death, does not establish the sort of "objectively intolerable risk of harm" that qualifies as cruel and unusual." *Baze v. Rees*, 553 U.S. 35, 50 (2008). Instead, a claimant must demonstrate an alternative procedure that is "feasible,

readily implemented, and in fact significantly reduce[s] a substantial risk of severe pain. If a State refuses to adopt such an alternative in the face of these documented advantages, without a legitimate penological justification for adhering to its current method of execution, then a State's refusal to change its method can be viewed as "cruel and unusual" under the Eighth Amendment. *Id.* at 52.

The Seventh Circuit has explained that "[t]he Supreme Court has recognized that [a] prisoner may challenge the means of his execution pursuant to 42 U.S.C. § 1983 to determine whether the method complies with constitutional requirements." *Woods v. Buss*, 496 F.3d 620, 622 (7th Cir. 2007). To succeed on such a claim, "the plaintiff must demonstrate both that there is an objectively serious deprivation and the deprivation was done with deliberate indifference." *Id.* at 623.

As a United States Magistrate Judge and, if confirmed, circuit judge, I will continue to apply Supreme Court and Seventh Circuit precedent in considering a claim that an execution protocol violates the Eighth Amendment's prohibition on cruel and unusual punishment.

9. 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. In *Glossip v. Gross*, the Supreme Court noted that a requirement of all Eighth Amendment method-of-execution claims is "identify[ing] an alternative that is 'feasible, readily implemented, and in fact significantly reduces a substantial risk of severe pain.'" *Glossip v. Gross*, 576 U.S. 863, 877 (2015) (quoting *Baze v. Rees*, 553 U.S. 35, 52 (2008)).

10. 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: In *Dist. Att'ys Off. for Third Jud. Dist. v. Osborne,* the Supreme Court addressed the issue of whether an individual has a right under the Due Process Clause to obtain postconviction access to the State's evidence for DNA testing. 557 U.S. 52, 61 (2009). The Court held that there was no substantive due process right to post-conviction access to DNA testing. *Id.* at 72.

As a United States Magistrate Judge and, if confirmed, circuit judge, I will continue to apply Supreme Court and Seventh Circuit precedent in considering a habeas corpus petition.

11. 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.

12. 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: In *Employment Division v. Smith*, 494 U.S. 872 (1990), the Supreme Court held that the Free Exercise Clause could not be used to challenge a neutral law of general applicability. Thus, a plaintiff may carry the burden of proving a free exercise violation by showing that a government entity has burdened his sincere religious practice pursuant to a policy that is not "neutral" or "generally applicable." *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2421-22 (2022). If the plaintiff demonstrates that the burden is not neutral or generally applicable, the Court will find a First Amendment violation unless the government can satisfy "strict scrutiny" by demonstrating its course was justified by a compelling state interest and was narrowly tailored in pursuit of that interest. *Id.* at 2422.

The Supreme Court has stated that neutrality and general applicability are interrelated; "failure to satisfy one requirement is a likely indication that the other has not been satisfied." *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531 (1993). In *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, 138 S. Ct. 1719, 1729 (2018), the Supreme Court explained that a law is not neutral "if the object of [the] law is to infringe upon or restrict practices because of their religious motivation." *Id.* at 533. If evidence of impermissible hostility toward one's sincere religious beliefs is found, the law is not neutral. *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, 138 S. Ct. 1719, 1729 (2018). Additionally, in *Tandon v. Newsom,* the Supreme Court explained that "government regulations are not neutral and general applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat *any* comparable secular activity more favorably than religious exercise." 141 S. Ct. 1294, 1296 (2021).

As a United States Magistrate Judge and, if confirmed, circuit judge, I will continue to apply Supreme Court and Seventh Circuit precedent in considering Free Exercise claims that may arise.

13. Under Supreme Court and U.S. Court of Appeals for the Circuit to which you have been nominated, what is the legal standard used to evaluate a claim that a 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 12.

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

Response: The Supreme Court has explained that it "is not within the judicial ken to question the centrality of particular beliefs or practices to a faith, or the validity of particular litigants' interpretations of those creeds." *Hernandez v. C.I.R.*, 490 U.S. 680, 699 (1989); *see also Thomas v. Review Bd. of Indiana Employ. Sec. Div.*, 450 U.S. 707, 715 (1981) (noting that it was not for the Court to say whether the line the claimant drew between the work he found consistent with his religious beliefs and that the claimant found morally objectionable was a reasonable one). Rather, the narrow function in this context is to determine whether the line drawn reflects "an honest conviction." *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 725 (2014).

Further, the Seventh Circuit has recognized that "[a] personal religious faith is entitled to as much protection as one espoused by an organized group." *Vinning-El v. Evans*, 657 F.3d 591, 593; *see also*, *Grayson v. Schuler*, 666 F.3d 450, 454 (7th Cir. 2012) ("a sincere religious believer doesn't forfeit his religious rights merely because he is not scrupulous in his observance").

As a United States Magistrate Judge and, if confirmed, circuit judge, I will continue to apply Supreme Court and Seventh Circuit precedent in evaluating whether a person's religious belief is sincerely held.

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

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

Response: In *District of Columbia v. Heller*, 554 U.S. 570, 592 (2008), the Supreme Court explained that the text and historical background of the Second Amendment guarantees an "individual right to possess and carry weapons in case of confrontation." *Id*. at 592. The Supreme Court concluded that the Second Amendment prohibited the infringement of a preexisting right to keep and bear arms and that that right was not limited to military usages, but included all traditionally lawful uses of arms, including self-defense. *Id*. at 628.

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: Since becoming a United States Magistrate Judge in 2018, I do not recall issuing a judicial opinion, order, or other decision adjudicating a claim under the Second Amendment or any analogous state law.

16. 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: In the dissent, Justice Holmes rejected the majority's notion that the Constitution should be used to limit government regulation and laissez-faire economy. Specifically, Justice Holmes argued that the "[C]onstitution is not intended to embody a particular economic theory, whether of paternalism and the organic relation of the citizen to the State or of laissez-faire." *Lochner v. New York*, 198 U.S. 45, 75 (1905).

In *Ferguson v. Skrupa*, 372 U.S. 726, 730 (1963), the Supreme Court noted that the "doctrine that prevailed *in Lochner*…—that due process authorizes courts to hold laws unconstitutional when they believe the legislature has acted unwisely—has long since been discarded." *See also, West Coast Hotel Co. v Parrish*, 300 U.S. 379 (1937) (overruled the *Lochner's* era minimum wage restriction).

As a United States Magistrate Judge, and circuit judge nominee, I am bound to apply all binding Supreme Court and Seventh Circuit precedent.

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

Response: In *Ferguson v. Skrupa*, 372 U.S. 726, 730 (1963), the Supreme Court noted that the "doctrine that prevailed *in Lochner*…—that due process authorizes courts to hold laws unconstitutional when they believe the legislature has acted unwisely—has long since been discarded." *See also, West Coast Hotel Co. v Parrish*, 300 U.S. 379 (1937) (overruled the *Lochner's* era minimum wage restriction).

As a United States Magistrate Judge, and circuit judge nominee, I am bound to apply all binding Supreme Court and Seventh Circuit precedent. As a sitting United States Magistrate Judge, and circuit judge nominee, it is inappropriate for me to comment on whether I believe a Supreme Court case is correctly decided.

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

a. If so, what are they?

Response: As a sitting United States Magistrate Judge and circuit judge nominee, it would be impermissible for me to comment on issues that are pending or that might come before the court.

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

Response: As a United States Magistrate Judge and, if confirmed, a circuit judge, I will faithfully apply all binding Supreme Court and Seventh Circuit precedent.

18. 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: The Supreme Court has explained that monopoly power "is the power to control prices or exclude competition." *United States v. E.I. du Pont de Nemours & Co.*, 351 U.S. 377, 319 (1956). In *Eastman Kodak Co. v. Image Tach. Servs., Inc.*, the Supreme Court found evidence that a business

controlled nearly 100% of the parts market and 80% to 95% of the service market, with no readily available substitutes, sufficient to survive summary judgment as to a Sherman Act monopoly claim. 504 U.S. 451, 481 (1992). The Supreme Court has also recognized that controlling over two-thirds of the market constitute a monopoly. *Id.*; *United States v. Grinnell Corp.*, 384 U.S. 563 (1966); *Am. Tobacco Co. v. United States*, 328 U.S. 781 (1946).

As a United States Magistrate Judge and, if confirmed, a circuit judge, I will faithfully apply all binding Supreme Court and Seventh Circuit precedent regarding what constitutes a monopoly.

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

Response: Please see my response to 18(a).

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

Response: Please see my response to 18(a).

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

Response: The Supreme Court has explained, in the context of diversity jurisdiction, there is no "federal general common law." *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938). Thus, "[e]xcept in matters governed by the Federal Constitution or by acts of Congress, the law to be applied in any case is the law of the state." *Id.* However, in *City of Milwaukee v. Illinois & Michigan*, the Supreme Court explained that "[w]hen Congress has not spoken to a particular issue…and when there exists a "significant conflict between some federal policy or interest and the use of state law, the Court has found it necessary, in a 'few and restricted' instances, to develop federal common law." 451 U.S. 304, 313 (1981).

20. 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: When interpreting a state constitutional provision, a district court is to defer to the state court's interpretation of state law. *See Wainwright v. Goode*, 464 U.S. 78, 84 (1983) ("the views of the state's highest court with respect to state law are binding on the federal courts").

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

Response: Please see my response to Question 20.

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

Response: The Supreme Court has recognized the importance of state courts being free to interpret their state constitution. *See Minnesota v. Nat'l Tea Co.*, 309 U.S. 551, 679 (1940) ("It is fundamental that state courts be left free and unfettered by us in interpreting their state constitution."). Generally speaking, state constitutional provisions can offer greater protections than their federal counterparts. As a United States Magistrate Judge and, if confirmed, a circuit judge, I will faithfully apply all binding Supreme Court and Seventh Circuit precedent regarding how to interpret provisions in state constitutions.

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

Response: As a United States Magistrate Judge, and circuit judge nominee, I am bound to apply all binding Supreme Court and Seventh Circuit precedent. As such, it is generally inappropriate for me to comment on whether any binding Supreme Court precedent was correctly decided. However, there are certain Supreme Court decisions that are so fundamental and widely accepted that they present an exception to this rule because they are not likely to be litigated. Consistent with the responses of other nominees, I believe *Brown v. Board of Education* was correctly decided.

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

Response: To my knowledge, the Supreme Court has not directly spoken to this question. Injunctive relief, generally, is considered 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, 130 S. Ct. 2743, 2748 (2010).

I am aware that Justice Gorsuch and Justice Thomas have addressed nationwide or universal injunctions in separate opinions in separate cases, but I am not aware that this issue has been addressed conclusively in a Supreme Court majority opinion. For example, Justice Thomas' concurring opinion in *Trump v. Hawaii* noted that "[i]f district courts have any authority to issue universal injunctions, that authority must come from a statute or the Constitution. No statute expressly grants district courts the power to issue universal injunctions. So the only possible bases for these injunctions are a generic statute that authorizes equitable relief or the courts' inherent constitutional authority. Neither of those sources would permit a form of injunctive relief that is '[in]consistent with our history and traditions. In sum, universal injunctions are legally and historically dubious. If federal courts continue to issue them, this Court is duty bound to adjudicate their authority to do so.'" 138 S. Ct. 2392, 2425-29 (2018).

Most recently, in *Dept. of Homeland Sec. v. N.Y.*, Justice Gorsuch stated in his concurring opinion that he hopes the Supreme Court "might at an appropriate juncture take up some of the underlying equitable and constitutional questions raised by the rise of nationwide injunctions." 140 S. Ct. 599, 601 (2020).

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

Response: The Seventh Circuit has found that "both historical and current practice lends support to a determination that the courts possess the authority to impose injunctions that extend beyond the parties before the court. The propriety of such an injunction, in a given case, is another matter." *City of Chi. v. Barr*, 961 F.3d 882, 912-18 (7th Cir. 2020) (addressing historical context of universal injunctions, the consistency of universal injunctions with Supreme Court law, and the propriety of injunctive relief).

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

Response: As a sitting United States Magistrate Judge and circuit judge nominee, it would be impermissible for me to comment on issues that are pending or that might come before the court.

23. 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: As a United States Magistrate Judge, I have never been presented with circumstances justifying issuance of a nationwide injunction. As a sitting United States Magistrate Judge and circuit judge nominee, it would be impermissible for me to comment on issues that are pending or that might come before the court such as what circumstances would lead to issuance of a nationwide injunction.

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

Response: Federalism is an important concept in our constitutional system that addresses the relationship and distribution of power between the national government and state governments. The Constitution divides these respective powers by enumerating a limited set of powers that the national, or federal, government may exercise, and prohibiting the states from exercising some powers. This basic

structural framework is solidified in the Tenth Amendment, which declares that the powers neither given to the federal government nor barred from the states are reserved for the states. The federal government is a government of limited powers. It may only exercise those powers specifically given to it under the Constitution.

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

Response: Please see my response to Question 4.

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

Response: A person exposed to a risk of future harm will generally pursue forward-looking, injunctive relief to prevent that harm from occurring, while an award of damages is generally meant to compensate for harm that has already occurred. *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190 2210 (2021). However, injunctive relief is an "extraordinary remedy never awarded as of right." *Winter v. Nat. Res. Defense Council, Inc.*, 555 U.S. 7, 24 (2008). In assessing whether injunctive relief should be awarded, courts "must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief." *Id.*

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

Response: "[T]he Due Process Clause specifically protects those fundamental rights and liberties which are, objectively, 'deeply rooted in this Nation's history and tradition,' and 'implicit in the concept of ordered liberty,' such that 'neither liberty nor justice would exist if they were sacrificed.'" *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997). The Supreme Court has recognized a number of fundamental rights protected by substantive due process, including: the right to marital privacy and the use of contraceptives, *Griswold v. Connecticut*, 381 U.S. 479 (1965); the right to interracial marriage, *Loving v. Virginia*, 388 U.S. 1 (1967); the right for unmarried individuals to use contraception, *Eisenstadt v. Baird*, 405 U.S. 438 (1972); the right to engage in intimate sexual conduct, *Lawrence v. Texas*, 539 U.S. 558 (2003); and the right of same-sex couples to marry, *Obergefell v. Hodges*, 576 U.S. 644 (2015).

28. The First Amendment provides "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging

the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

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

Response: Please see my response to Question 12.

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

Response: The Free Exercise Clause provides that Congress shall make no law prohibiting the free exercise of religion. U.S. Const. amend. I. The Supreme Court has explained that this clause not only protects the right to harbor religious beliefs inwardly and secretly, it also protects "the ability of those who hold religious beliefs of all kinds to live out their faith in daily life through 'the performance of (or abstention from) physical acts.'" *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2421 (2022).

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

Response: Please see my response to Question 12 and 14.

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

Response: Please see my response to Question 14.

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: Under the Religious Freedom Restoration Act, the federal government is restricted "from substantially burdening a person's exercise of religion even if the burden results from a rule of general applicability unless the Government demonstrates that application of the burden to the person (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." *Burwell v. Hobby Lobby Stores, Inc*., 573 U.S. 682, 705, 134 S. Ct. 2751, 2767, 189 L. Ed. 2d 675 (2014) (law requiring a closely held corporation to provide insurance coverage for contraceptives in contravention of its owners'

religious beliefs violates RFRA). The Supreme Court has held that RFRA applies to all federal law. *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct. 2367, 2383 (2020) ("Placing Congress' intent beyond dispute, RFRA specifies that it 'applies to all Federal law, and the implementation of that law, whether statutory or otherwise.' RFRA also permits Congress to exclude statutes from RFRA's protections.").

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: Based on a review of files and electronic databases, I have identified two cases that I have been assigned involving the free exercise of religion: *Hartkmeyer v. Barr*, No. 2:20-cv-00336-JMS-DLP (Religious Freedom Restoration Act) and *Kluge v. Brownsburg Cmty. Sch. Corp.*, No. 1:19-cv-02462-JMS-DLP (Free Exercise Clause). My involvement in those cases is limited to case management and conducting settlement conferences.

29. 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: While I am not familiar with this comment by Justice Scalia, I understand it to stress the importance of judges to fairly and impartially render decisions. As a sitting United States Magistrate Judge, I swore an oath to fairly and impartially render decisions setting aside any personal preferences, biases, religious beliefs, or political ideologies, and I will continue to do this if confirmed to the Seventh Circuit Court of Appeals.

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

Response: To the best of my recollection, I have never taken the position in litigation or a publication that a federal or state statute was unconstitutional.

a. If yes, please provide appropriate citations.

Response: Please see my response to Question 30.

31. 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.

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

Response: As a sitting United States Magistrate Judge, a circuit judge nominee, it would be inappropriate for me to opine on this highly debated political topic. As a former federal prosecutor, I worked tirelessly to ensure the laws of this country were fairly and equally enforced.

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

Response: Yes.

34. How did you handle the situation?

Response: I adhered to my oath to diligently and zealously advocate in the best interest of my client, despite my personal views.

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

Response: Yes.

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

Response: I am unable to identify any particular Federalist Paper that has shaped my views of the law.

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

Response: As a sitting United States Magistrate Judge and circuit judge nominee, it would be impermissible for me to comment on issues that are pending or that might come before the court. As a United States Magistrate Judge and, if confirmed, a circuit judge, I will faithfully apply all binding Supreme Court and Seventh Circuit precedent.

38. Other than at your hearing before the Senate Judiciary Committee, have you ever testified under oath? Under what circumstances? If this testimony is

available online or as a record, please include the reference below or as an attachment.

Response: No.

39. 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.

40. 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.

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

Response: No.

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

Response: Please see my response to Question 41.

42. Have you ever confessed error to a court?

Response: Yes.

a. If so, please describe the circumstances.

Response: To the best of my recollection, while serving as a federal prosecutor before being elevated to the bench, there might have been two or three occasions on which I filed corrective notices to a court upon discovering an error in a previous filing.

43. 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: My understanding of the duty of candor is that I have to provide full, complete and truthful answers to questions posed by members of the Senate Judiciary Committee. I have done that here and will continue to do so in my role as a member of the federal judiciary.

Questions for the Record for Doris Pryor
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.

Questions for the Record
Senator John Kennedy

Doris L. Pryor

1. **Please describe your judicial philosophy. Be as specific as possible.**

   Response: As a sitting United States Magistrate Judge, and as a nominee to the Seventh Circuit Court of Appeals, my judicial philosophy has been to approach each case with an open mind, to give all litigants a meaningful opportunity to be heard, and to apply the law fairly and impartially as interpreted by Supreme Court and Seventh Circuit precedent to the facts as established by the evidence in the record. Personal views or opinions have no impact on a judge's decision-making in a case.

2. **Should a judge look beyond a law's text, even if clear, to consider its purpose and the consequences of ruling a particular way when deciding a case?**

   Response: The Supreme Court has explained that with statutory construction, "the starting point for interpreting a statute is the language of the statute itself. Absent a clearly expressed legislative intention to the contrary, that language must ordinarily be regarded as conclusive." *Consumer Prod. Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980).

3. **Should a judge consider statements made by a president as part of legislative history when construing the meaning of a statute?**

   Response: The Supreme Court has explained that with statutory construction, lower courts should "not resort to legislative history to cloud a statutory text that is clear." *Ratzlaf v. United States*, 510 U.S. 135, 147–48 (1994). A lower court judge must first look at the statutory text because "the authoritative statement is the statutory text, not the legislative history or any other extrinsic material." *Exxon Mobil Corp. v. Allapattah Servs., Inc*., 545 U.S. 546, 568 (2005). "Legislative history, for those who take it into account, is meant to clear up ambiguity, not create it." *Milner v. Dep't of the Navy*, 562 U.S. 562, 574 (2011).

   Where statutory text is ambiguous, the Seventh Circuit has held that resorting to the legislative history may be necessary. *Five Points Rd. Joint Venture v. Johanns*, 542 F.3d 1121, 1128 (7th Cir. 2008). Although the Supreme Court has not gone so far as to deem "legislative history inherently unreliable in all circumstances," it has cautioned, that "legislative history is itself often murky, ambiguous, and contradictory." *Exxon Mobil Corp*., 545 U.S. at 568. The Supreme Court has, however, recognized that legislative history may be useful for a different purpose, such as to "ferret out shifts in linguistic usage or subtle distinctions between literal and ordinary meaning." *Bostock v. Clayton Cnty., Ga*., 140 S. Ct. 1731, 1749, 1750 (2020).

To the best of my knowledge when the Supreme Court and the Seventh Circuit have looked to legislative history, they have more commonly looked to congressional legislative history rather than presidential statements because Congress has the power to make laws under Article I of the Constitution.

As a United States Magistrate Judge, I adhere to binding precedent of the Supreme Court and Seventh Circuit that legislative history is to be consulted if and only if the statutory text in question is ambiguous.

4. **What First Amendment restrictions can the owner of a shopping center place on private property?**

   Response: In *PruneYard Shopping Ctr. v. Robins*, the Supreme Court held that the property rights and the First Amendment rights of the owner of a shopping center were not infringed by individuals exercising their state-protected rights of expression and petition on the shopping owner's private property. 447 U.S. 74, 88 (1980).

5. **What does the repeated reference to "the people" mean within the Bill of Rights? Is the meaning consistent throughout each amendment that contains reference to the term?**

   Response: In *District of Columbia v. Heller*, the Supreme Court addressed the meaning of "the people" in the Constitution and Bill of Rights. The Supreme Court explained that "the people," as used in the Tenth Amendment "arguably refer[s] to 'the people' acting collectively"; "[n]owhere else in the Constitution does a 'right' attributed to 'the people' refer to anything other than an individual right." 554 U.S. 570, 579-80 (2008).

6. **Are non-citizens unlawfully present in the United States entitled to a right of privacy?**

   Response: The Supreme Court has recognized that unlawful non-citizens are protected by the Equal Protection Clause. *United States v. Verdugo-Urquidez*, 494 U.S. 259, 270–71, (1990) (citing *Plyler v. Doe*, 457 U.S. 202, 211–212 (1982)). I am unaware of any specific Supreme Court or Seventh Circuit precedent relating to whether non-citizens unlawfully present in the United States have a right of privacy.

7. **Are non-citizens unlawfully present in the United States entitled to Fourth Amendment rights during encounters with border patrol authorities or other law enforcement entities?**

   Response: The Supreme Court has long recognized the concern for the protection of the integrity of the border. In *United States v. Montoya de Hernandez*, the Court noted because of "Congress' power to protect the Nation by stopping and examining persons entering this country, the Fourth Amendment's balance of reasonableness is qualitatively different at the international border than in the interior. Routine searches of the persons and effects of entrants are not subject to any requirement of reasonable suspicion, probable cause, or warrant….". 473 U.S. 531, 538, (1985).

8. At what point does equal protection of the law attach to a human life?

Response: As a sitting United States Magistrate Judge, it is inappropriate for me to comment on matters that may come before me. In *Dobbs v. Jackson Women's Health Org.,* 142 S. Ct. 2228, 2261 (2022), the Supreme Court noted, in overruling *Roe v. Wade*, that the "opinion is not based on any view about if and when prenatal life is entitled to any of the rights enjoyed after birth."

9. Are state laws that require voters to present identification in order to cast a ballot illegitimate, draconian, or racist?

Response: In *Crawford v. Marion Cnty. Election Bd.*, the Supreme Court addressed the constitutionality of an Indiana statute requiring citizens voting in person on election day, or casting a ballot in person at the office of the circuit court clerk prior to election day, to present government-issued photo identification. 553 U.S. 181, 185 (2008). The Supreme Court held that the State's interests in election modernization, deterring and detecting voter fraud, and safeguarding voter confidence were "neutral and sufficiently strong to require" the Court to reject the petitioners' facial attack on the statute. *Id.* at 191-204. The Court concluded that the "application of the statute to the vast majority of Indiana voters is amply justified by the valid interest in protecting 'the integrity and reliability of the electoral process.'" *Id.* at 204.

As a United States Magistrate Judge, I faithfully follow all Supreme Court and Seventh Circuit precedent, and would continue to do so if confirmed to the Seventh Circuit.

Senator Mike Lee
Questions for the Record
Doris Pryor, Nominee to be United States Circuit Judge for the Seventh Circuit

1. How would you describe your judicial philosophy?

Response: As a sitting United States Magistrate Judge, and as a nominee to the Seventh Circuit Court of Appeals, my judicial philosophy has been to approach each case with an open mind, to give all litigants a meaningful opportunity to be heard, and to apply the law fairly and impartially as interpreted by Supreme Court and Seventh Circuit precedent to the facts as established by the evidence in the record. Personal views or opinions have no impact on a judge's decision-making in a case.

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

Response: As a United States Magistrate Judge, when interpreting statutes, I follow binding precedent where a federal statutory or regulatory provision has been interpreted by the Supreme Court or the Seventh Circuit. If there is no binding precedent, I begin with the plain language of the pertinent statute or regulation, including the statutory definitions. *Exxon Mobil Corp. v. Allapattah Servs., Inc*., 545 U.S. 546, 568 (2005) (a lower court judge must first look at the statutory text because "the authoritative statement is the statutory text, not the legislative history or any other extrinsic material."). The Supreme Court has explained that with statutory construction, "the starting point for interpreting a statute is the language of the statute itself." *Consumer Prod. Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980). *See also Bostock v. Clayton Cnty., Ga.*, 140 S. Ct. 1731, 1749 (2020). If the meaning is "unambiguous and 'the statutory scheme is coherent and consistent,'" then "the inquiry ceases." *Kingdomware Techs., Inc. v. United States*, 579 U.S. 162, 171 (2016).

The Supreme Court has instructed that federal courts "do not resort to legislative history to cloud a statutory text that is clear." *Ratzlaf v. United States*, 510 U.S. 135, 147–48 (1994); *see also Milner v. Dep't of the Navy*, 562 U.S. 562, 574 (2011) ("Legislative history, for those who take it into account, is meant to clear up ambiguity, not create it."). If the text is ambiguous, the Seventh Circuit has held that resorting to the legislative history may be necessary. *Five Points Rd. Joint Venture v. Johanns*, 542 F.3d 1121, 1128 (7th Cir. 2008). Although the Supreme Court has not gone so far as to deem "legislative history inherently unreliable in all circumstances," it has cautioned, however, that "legislative history is itself often murky, ambiguous, and contradictory." *Exxon Mobil Corp*., 545 U.S. at 568-69. The Supreme Court has, however, recognized that legislative history may be useful for a different purpose, such as to "ferret out shifts in linguistic usage or subtle distinctions between literal and ordinary meaning." *Bostock*, 140 S. Ct. at 1750. As a United States Magistrate Judge, I adhere to binding precedent guiding that legislative history is to be consulted if and only if the statutory text in question is ambiguous.

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

Response: As a United States Magistrate Judge and, if confirmed, circuit judge, I would follow binding Supreme Court and Seventh Circuit precedent when deciding a case that turns on the interpretation of a constitutional provision. For instance, the Supreme Court has instructed that the text and original meaning of a constitutional provision play an important role in interpreting the Constitution. *See, e.g.*, *United States v. Jones*, 565 U.S. 400 (2012) (Fourth Amendment); *District of Columbia v. Heller*, 554 U.S. 570 (2008) (Second Amendment); *Crawford v. Washington*, 541 U.S. 36 (2004) (Sixth Amendment).

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

Response: Please see my response to Question 3.

a. Does the "plain meaning" of a 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 the Supreme Court observed, the Constitution is "intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs." *McCulloch v. Maryland*, 17 U.S. 316, 415 (1819). The Constitution does not change unless amended pursuant to the procedures set forth in Article V.

As a sitting United States Magistrate Judge, I follow the interpretive methods set out in binding precedent from the Supreme Court and the Seventh Circuit. There are instances when the Supreme Court has on occasion considered contemporary meaning (e.g., *Trop v. Dulles*, 356 U.S. 86 (1956) (determining whether punishment is cruel and unusual); *Miller v. California*, 413 U.S. 15 (1973) (definition of obscenity). If confirmed, I would follow Supreme Court and Seventh Circuit precedent as applicable in interpreting the Constitution.

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

Response: Please see my response to Question 2.

a. Does the "plain meaning" of a statute 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: When engaging in statutory interpretation, courts start with the text of the statute to ascertain its "plain meaning." *Jackson v. Blitt & Gaines, P.C.*, 833

F.3d 860, 863 (7th Cir. 2016). In ascertaining a statute's plain meaning, we "must look to the particular statutory language at issue, as well as the language and design of the statute as a whole." *K Mart Corp. v. Cartier, Inc*., 486 U.S. 281, 291 (1988). Unless words are otherwise defined, the statutory language is "interpreted as taking their ordinary, contemporary, common meaning." *Sandifer v. U.S. Steel Corp*., 571 U.S. 220, 227 (2014). This is determined by looking at what the words meant when the statute was enacted. *United States v. Melvin*, 948 F.3d 848, 851–52 (7th Cir. 2020); *see also Bostock v. Clayton County*, 140 S. Ct. 1731, 1738 (2020) ("This Court normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment.").

As a sitting United States Magistrate Judge, I follow the interpretive methods set out in binding precedent from the Supreme Court and the Seventh Circuit.

6. What are the constitutional requirements for standing?

Response: The requirements for Article III standing are: (1) "the plaintiff must have suffered an 'injury in fact'—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) 'actual or imminent, not "conjectural or hypothetical;" (2) "there must be a causal connection between the injury and the conduct complained of—the injury has to be 'fairly ... trace[able] to the challenged action of the defendant, and not ... th[e] result [of] the independent action of some third party not before the court;" and (3) "it must be 'likely,' as opposed to merely 'speculative,' that the injury will be 'redressed by a favorable decision.'" *U.S. v. Windsor*, 570 U.S. 744, 757 (2013) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992)).

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

Response: The Supreme Court has recognized that Congress has implied powers beyond those enumerated in the Constitution. *See, e.g.*, *McCulloch v. Maryland*, 17 U.S. 316, 323-24 (1819) ("Even without the aid of the general clause in the constitution, empowering congress to pass all necessary and proper laws for carrying its powers into execution, the grant of powers itself necessarily implies the grant of all usual and suitable means for the execution of the powers granted."); *see also United States v. Comstock*, 560 U.S. 126, 144 (2010) ("The powers 'delegated to the United States by the Constitution' include those specifically enumerated powers listed in Article I along with the implementation authority granted by the Necessary and Proper Clause."). In *McCulloch*, the Supreme Court found that Congress had the implied power to incorporate a bank. 17 U.S. 316 (1819).

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

Response: As a sitting United States Magistrate Judge, I am bound to faithfully follow all Supreme Court and Seventh Circuit binding precedent when determining whether a law is within the scope of Congress's powers. *See Nat'l Fed'n of Indep. Bus. V. Sebelius*, 567 U.S. 519, 570 (2012) ("[T]he 'question of the constitutionality of action taken by Congress does not depend on recitals of the power which it undertakes to exercise.'" (quoting *Woods v. Cloyd W. Miller Co.*, 333 U.S. 138, 144 (1948))).

As a United States Magistrate judge, and circuit judge nominee, I have a duty to apply all Supreme Court and Seventh Circuit binding precedent.

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

Response: Yes. "[T]he Due Process Clause specifically protects those fundamental rights and liberties which are, objectively, "deeply rooted in this Nation's history and tradition,' and 'implicit in the concept of ordered liberty,' such that 'neither liberty nor justice would exist if they were sacrificed.'" *Washington v. Glucksberg*, 521 U.S. 702, 720-21 1997). The Supreme Court has recognized a number of fundamental rights protected by substantive due process, including: the right to marital privacy and the use of contraceptives, *Griswold v. Connecticut*, 381 U.S. 479 (1965); the right to interracial marriage, *Loving v. Virginia*, 388 U.S. 1 (1967); the right for unmarried individuals to use contraception, *Eisenstadt v. Baird*, 405 U.S. 438 (1972); the right to engaged in intimate sexual conduct, *Lawrence v. Texas*, 539 U.S. 558 (2003); and the right of same-sex couples to marry, *Obergefell v. Hodges*, 576 U.S. 644 (2015).

10. What rights are protected under substantive due process?

Response: Please see my response to Question 9.

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

Response: As a United States Magistrate judge, and circuit judge nominee, I have a duty to apply all Supreme Court and Seventh Circuit binding precedent. The Supreme Court overruled *Roe v. Wade* in *Dobbs v. Jackson Women's Health Organization*, No. 19-1392, 2022 WL 2276808 (U.S. June 24, 2022). Further, in *Ferguson v. Skrupa*, 372 U.S. 726, 730 (1963), the Supreme Court noted that the "doctrine that prevailed in Lochner…—that due process authorizes courts to hold laws unconstitutional when they believe the legislature has acted unwisely—has long since been discarded." *See also West Coast Hotel Co. v Parrish*, 300 U.S. 379 (1937) (overruled the Lochner's era minimum wage restriction).

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

Response: Article 1, Section 8 of the Constitution delegates to Congress the power to regulate commerce with foreign Nations, and among the several States, and with the Indian Tribes. In *Gibbons v. Ogden*, the Supreme Court acknowledged that limitations on the commerce power are inherent in the language of the Commerce Clause. 22 U.S. 1, 28 (1824). In *U.S. v. Lopez*, the Supreme Court identified three broad categories that Congress may regulate under its commerce power: (1) the use of the channels of interstate commerce; (2) the instrumentalities of interstate commerce, or persons, or things in interstate commerce, even though the threat may come only from intrastate activities; and (3) those activities having a substantial relation to interstate commerce, *i.e.*, those activities that substantially affect interstate commerce." 514 U.S. 549, 558-59 (1995).

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

Response: In *Mass. Bd. of Ret. v. Murgia*, the Supreme Court explained that a suspect class is one "saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process." 427 U.S. 307 (1976) (quoting *San Antonio Sch. Dist. v. Rodriguez*, 411 U.S. 1, (1973)). Specifically, the Supreme Court has identified immutable characteristics determined by the accident of birth, such as race, national origin, religion, and alienage as suspect classes. *See Graham v. Richardson*, 403 U.S. 365, 371-72 (1971).

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

Response: Checks and balances and the separation of powers is the hallmark of our Constitution's structure. The framers created our national government, to be divided among the three branches – the executive branch, legislative branch, and judicial branch, as "a self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of the other." *Morrison v. Olson*, 487 U.S. 654, 693 (1988).

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: As a United States Magistrate judge, and circuit judge nominee, I have a duty to apply all Supreme Court and Seventh Circuit binding precedent in deciding a case in which one branch assumed an authority not granted to it by the text of the Constitution.

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

Response: As a sitting United States Magistrate Judge, and as a nominee to the Seventh Circuit Court of Appeals, my judicial philosophy has been to approach each case with an open mind, to give all litigants a meaningful opportunity to be heard, and

to apply the law fairly and impartially as interpreted by Supreme Court and Seventh Circuit precedent to the facts as established by the evidence in the record. Personal views or opinions have no relevance to nor impact upon judicial opinion.

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

Response: As a United States Magistrate Judge, and if confirmed, Seventh Circuit judge, my goal is to avoid both scenarios.

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 tracked the trend of Supreme Court invalidation of federal statutes from 1789 to the present. Accordingly, I am unable to opine about any reasoning behind the upward trajectory stated in this question. As a United States Magistrate judge, and circuit judge nominee, I have a duty to apply all Supreme Court and Seventh Circuit binding precedent.

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

Response: Black's Law Dictionary defines "judicial review" as "[a] court's power to review the actions of other branches or levels of government; esp., the courts' power to invalidate legislative and executive actions as being unconstitutional." *Judicial Review,* Black's Law Dictionary (11th ed. 2019). "Judicial supremacy" refers to "[t]he doctrine that interpretations of the Constitution by the federal judiciary in the exercise of judicial review, esp. U.S. Supreme Court interpretations, are binding on the coordinate branches of the federal government and the states." *Judicial Supremacy,* Black's Law Dictionary (11th ed. 2019). Black's Law Dictionary further explains that the latter doctrine usually "applies to judicial determinations that some legislation or other action is unconstitutional." *Id.*

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: Members of both the state and federal legislatures, and all executive and judicial officers (state and federal) take an oath to support the constitution. U.S. Const. art. VI. In keeping with this oath, I believe there is an expectation that elected officials will honor the decisions of the Supreme Court and the rule of law. Since *Marbury v. Madison*, the judiciary has had the authority to review the constitutionality of laws and of executive acts. 5 U.S. 137 (1803). This principle has ever since been respected by this country's leaders as a permanent and indispensable feature of our constitutional system. *Cooper v. Aaron*, 358 U.S. 1, 18 (1958).

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: Federalist 78 underscores the Constitution's justiciability doctrine limiting the federal judiciary to deciding true cases and controversies and not providing advisory opinions. As a sitting United States Magistrate Judge, I have adhered to this principle by approaching each case with an open mind, giving all litigants a meaningful opportunity to be heard, and fairly and impartially applying the law to the facts as established by the evidence in the record, setting aside any personal views or opinions being sure to decide only the matter presented.

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

Response: Lower court judges are to follow the binding precedent of the Supreme Court and of the circuit court within which their district resides. If confirmed, I would faithfully apply all Supreme Court and Seventh Circuit binding precedent.

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: When imposing a sentence, the listed demographics should not be considered by the judge under 18 U.S.C. § 3553(a). Instead, the court is to consider: (1) the nature and circumstances of the offense and the history and characteristics of the defendant, (2) the need for the sentence imposed, (3) the kinds of sentences available, (4) the kinds of sentence and the sentencing range set forth in the Guidelines, (5) any pertinent policy statement, (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct, and (7) the need to provide restitution to any victims of the offense.

The United States Sentencing Commission Guidelines Manual 2021, which federal judges are to follow, provides prescribed guideline ranges specifying an appropriate sentence for each class of convicted persons determined by coordinating the offense behavior categories with the offender characteristic categories. Section 5H1.10 provides that the race, sex, national origin, creed, religion, and socio-economic status of the defendant are not relevant in the determination of a sentence.

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: Black's Law Dictionary defines "equity" as "[f]airness; impartiality; evenhanded dealing" and as "the body of principles constituting what is fair and right" *Equity,* Black's Law Dictionary (11th ed. 2019).

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

Response: Black's Law Dictionary defines "equality" as "the quality, state, or condition of being equal; esp., likeness in power or political status." *Equality,* Black's Law Dictionary (11th ed. 2019). While "equity" is defined as "[f]airness; impartiality; evenhanded dealing" and as "the body of principles constituting what is fair and right" *Equity,* Black's Law Dictionary (11th ed. 2019).

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

Response: The Fourteenth Amendment provides that no State shall deny to any person within its jurisdiction the equal protection of the laws. U.S. Const., amend. XIV, § 1.

27. How do you define "systemic racism?"

Response: Black's Law Dictionary defines "racism" as the "[u]nfair treatment of people, often including violence against them, because they belong to a different race from one's own." *Racism*, Black's Law Dictionary (11th ed. 2019). In the Cambridge Dictionary, "systemic racism" is defined "policies and practices that exist throughout a whole society or organization, and that result in and support a continued unfair advantage to some people and unfair or harmful treatment of others based on race." *Systemic Racism,* Cambridge Dictionary (2022).

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

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

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

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

30. In 2019 you were a co-presenter at the McKinney-Shephard American Inn of Court's presentation entitled "The Notorious R.B.G. – From Ascent to Dissent." In that presentation you praised Justice Ginsburg's contributions to the nominations process, including judicial nominees being "willing to confirm their support for well-established Supreme Court precedent." When has the Supreme Court said it is appropriate to reconsider "established" precedent?

Response: I have never made comments praising Justice Ginsburg for being "willing to confirm their support for well-established Supreme Court precedent." After reviewing my submission to the SJQ, I understand that this comment was included on a PowerPoint slide regarding a 2019 American Inn of Court presentation. On March 21, 2019, I was a co-presenter with eleven members of the McKinney-Shepard American Inn of Court discussing the professional legacy of Justice Ginsburg. Each presenter was responsible for developing and implementing PowerPoint slides that summarizes their two-minute talking points. My comments were limited to introductory remarks about each speaker and the areas of Justice Ginsburg's life that the team expected to cover. While discussing Justice Ginsburg's Supreme Court confirmation hearing, one of the presenters discussed precedent. This statement was not made by me, nor did I assist in developing or crafting that PowerPoint slide. See, Pryor SJQ, Question 12(d), Co-Presenter, "The Notorious R.B.G – From Ascent to Dissent," McKinney-Shepard American Inn of Court.

In *Dobbs v. Jackson Women's Health Org.*, the Supreme Court identified factors that should be considered when overruling precedent including the nature of the error, the quality of the reasoning, the "workability" of the rules imposed on the country, the disruptive effect on other areas of the law, and the absence of concrete reliance. 142 S. Ct. 2228, 2264-78 (2022).

Senator Ben Sasse
Questions for the Record for Doris L. Pryor
U.S. Senate Committee on the Judiciary
Hearing: "Nominations"
July 13, 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: As a sitting United States Magistrate Judge, my judicial philosophy has been to approach each case with an open mind, to give all litigants a meaningful opportunity to be heard, and to fairly and impartially apply the law as clearly stated in the Constitution or in a statute, interpreted by Supreme Court and Seventh Circuit precedent to the facts as established by the evidence in the record. Personal views or opinions have no impact on a judge's decision-making in a case.

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

   Response: I follow the Supreme Court's guidance that when interpreting the Constitution, the text and original meaning of a provision is an important consideration and, indeed, should be looked to first. *See, e.g.*, *United States v. Jones*, 565 U.S. 400 (2012) (Fourth Amendment); *District of Columbia v. Heller*, 554 U.S. 570 (2008) (Second Amendment); *Crawford v. Washington*, 541 U.S. 36 (2004) (Sixth Amendment). I have never applied a specific label related to a theory of constitutional interpretation to myself because as a federal judge, my responsibility is to follow the precedent established by the Supreme Court and the Seventh Circuit. If confirmed, I would faithfully apply all Supreme Court and Seventh Circuit binding precedent utilizing acceptable methods of constitutional and statutory construction.

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

   Response: The Supreme Court has repeatedly held that the "starting point for our analysis is the statutory text." *Desert Palace, Inc. v. Costa*, 539 U.S. 90, 98 (2003). When "the words of [a] statute are unambiguous, 'the judicial inquiry is complete.'" *Id*. (quoting *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253-54 (1992)). As stated above in response to Question 3, I have never applied a specific label related to myself. My judicial opinions do reflect that I am focused on the text of the statute that may be at issue in a particular case. If confirmed, I would faithfully follow Supreme Court and Seventh Circuit precedent utilizing acceptable methods of constitutional and statutory construction.

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

   Response: I believe that the Constitution is an enduring document whose meaning can be applied to present day circumstances. As the Supreme Court observed, the Constitution is "intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs." *McCulloch v. Maryland*, 17 U.S. 316, 415 (1819). The Constitution does not change unless amended pursuant to the procedures set forth in Article V. If confirmed, I would follow Supreme Court and Seventh Circuit precedent in interpreting the Constitution.

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

   Response: Not having researched or studied the distinct jurisprudence of all Supreme Court Justices appointed since January 20, 1953, identification of a particular Supreme Court Justice or Justices who I admire more than any others would be unfeasible if not imprudent, as the opinion would be insufficiently supported by careful and complete study. I deeply respect the Supreme Court Justices for their judicial temperament, open-minded and rigorous approach to the law. As a United States Magistrate judge, and circuit judge nominee, I have a clear duty to apply all Supreme Court and Seventh Circuit binding precedent, regardless of admiration for any particular Justice or Justices.

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: Response: First, I would note that the Seventh Circuit could only overturn circuit precedent while sitting en banc, and en banc proceedings are generally disfavored unless either "en banc consideration is necessary to secure or maintain uniformity of the court's decisions" or "the proceeding involves a question of exceptional importance." Fed. R. App. P. 35. In addition, the Seventh Circuit requires a compelling reason to overturn circuit precedent. *McClain v. Retail Food Emps. Joint Pension Plan*, 413 F.3d 582, 586 (7th Cir. 2005). In *United States v. Thomas*, 27 F.4th 556, 559 (7th Cir. 2022), the Seventh Circuit identified some reasons that would justify overruling circuit precedent, including: "(1) when the circuit is an outlier and can save work for Congress and the Supreme Court by eliminating a conflict; (2) when overruling might supply a new line of argument that would lead other circuits to change their positions in turn; and (3) when prevailing doctrine works a substantial injury."

   If confirmed to the Seventh Circuit, I would consider these factors when determining whether there is a "compelling" reason to overturn circuit precedent.

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

Response: Whether conflicts are evident between circuit precedent and either the Constitution or text of a statute, the principles to be applied in determining whether to overturn circuit precedent are the same. Therefore, I respectfully direct your attention to 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 interpreting statutes, binding precedent where a federal statutory or regulatory provision has been interpreted by the Supreme Court or the Seventh Circuit determines what if any impact extrinsic factors may have. If there is no binding precedent, one should begin with the plain language of the pertinent statute or regulation, including the statutory definitions. *Exxon Mobil Corp. v. Allapattah Servs., Inc*., 545 U.S. 546, 568 (2005) (a lower court judge must first look at the statutory text because "the authoritative statement is the statutory text, not the legislative history or any other extrinsic material."). The Supreme Court has explained that with statutory construction, "the starting point for interpreting a statute is the language of the statute itself." *Consumer Prod. Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980). *See also Bostock v. Clayton Cnty., Ga.*, 140 S. Ct. 1731, 1749 (2020). If the meaning is "unambiguous and 'the statutory scheme is coherent and consistent,'" then "the inquiry ceases." *Kingdomware Techs., Inc. v. United States*, 136 S. Ct. 1969, 1976 (2016).

The Supreme Court has instructed that federal courts "do not resort to legislative history to cloud a statutory text that is clear." *Ratzlaf v. United States*, 510 U.S. 135, 147–48 (1994); *see also Milner v. Dep't of the Navy*, 562 U.S. 562, 574 (2011) ("Legislative history, for those who take it into account, is meant to clear up ambiguity, not create it."). If the text is ambiguous, the Seventh Circuit has held that resorting to the legislative history may be necessary. *Five Points Rd. Joint Venture v. Johanns*, 542 F.3d 1121, 1128 (7th Cir. 2008). Although the Supreme Court has not gone so far as to deem "legislative history inherently unreliable in all circumstances," it has cautioned, that "legislative history is itself often murky, ambiguous, and contradictory." *Exxon Mobil Corp*., 545 U.S. at 568-69. The Supreme Court has, however, recognized that legislative history may be useful for a different purpose, such as to "ferret out shifts in linguistic usage or subtle distinctions between literal and ordinary meaning." *Bostock*, 140 S. Ct. at 1750. As a United States Magistrate Judge, I adhere to binding precedent guiding that legislative history is to be consulted if and only if the statutory text in question is ambiguous.

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: When imposing a sentence, a judge is to consider all of the factors under 18 U.S.C. § 3553(a), including the (1) the nature and circumstances of the offense and the history and characteristics of the defendant, (2) the need for the sentence imposed, (3) the kinds of sentences available, (4) the kinds of sentence and the sentencing range set forth in the Guidelines, (5) any pertinent policy statement, (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct, and (7) the need to provide restitution to any victims of the offense. Moreover, the United States Sentencing Commission Guidelines Manual 2021, Section 5H1.10 provides that the race, sex, national origin, creed, religion, and socio-economic status of the defendant are not relevant in the determination of a sentence.

Questions from Senator Thom Tillis
for Doris L. Pryor
Nominee to be United States Circuit Judge for the Seventh Circuit

1. **Do you believe that a judge's personal views are irrelevant when it comes to interpreting and applying the law?**

   Response: Yes.

2. **What is judicial activism? Do you consider judicial activism appropriate?**

   Response: Black's Law Dictionary defines "judicial activism" as "[a] philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions, usually with the suggestion that adherents of this philosophy tend to find constitutional violations and are willing to ignore governing texts and precedents." *Judicial Activism,* Black's Law Dictionary (11th ed. 2019). Judicial activism is contrary to Canon 3 of the Code of Conduct for United States Judges which provides that "a judge should perform the duties of the office fairly, impartially, and diligently."

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

   Response: I believe that impartiality should be expected and required of any judge. Canon 3 of the Code of Conduct for United States Judges provides "[a] judge should perform the duties of the office fairly, impartially, and diligently."

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: Presumably, faithfully interpreting the law commonly results in an undesirable outcome for the party that the court ruled against. Nevertheless, a judge's duty is to faithfully apply the law in every instance. As a United States Magistrate Judge, I have always sought to faithfully apply the law to the facts of the case before me without regard to anyone's desired outcome.

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: As a United States Magistrate Judge and, if confirmed, circuit judge, I will continue to apply Supreme Court and Seventh Circuit precedent in considering challenges under the Second Amendment, including *New York State Rifle & Pistol Association v. Bruen,* 142 S. Ct. 2111 (2022), *McDonald v. City of Chicago*, 561 U.S. 742 (2010), and *District of Columbia v. Heller*, 554 U.S. 570 (2008).

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 United States Magistrate Judge and, if confirmed, circuit judge, I will continue to apply Supreme Court and Seventh Circuit precedent in considering challenges under the Second Amendment. In *Tandon v. Newsom*, 141 S. Ct. 1294 (2021), the Supreme Court considered a challenge to COVID-19 restrictions that burdened constitutional rights during a pandemic. The Court applied strict scrutiny to those restrictions and granted an injunction against enforcing the restrictions with respect to persons exercising their rights under the Free Exercise Clause.

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: When determining whether a law enforcement officer is entitled to qualified immunity, as a United States Magistrate Judge, I review the facts of the case, evidence and arguments of the parties and apply the analysis dictated by Supreme Court precedent on the issue, imploring a two-party inquiry to determine: (1) whether the facts, taken in the light most favorable to the plaintiff, show that the officer violated a constitutional right; and (2) whether that constitutional right was clearly established at the time of the alleged violation. *Saucier v. Katz*, 533 U.S. 194, 201 (2001); *see also Mitchum v. City of Indianapolis*, No. 1:19-cv-02277-DLP-JPH, 2021 WL 2915025, at *10 (S.D. Ind. July 12, 2021) (citing *McComas v. Brickley*, 673 F.3d 722, 725 (7th Cir. 2012)). The first question is one of law. The second requires a broader inquiry which the Supreme Court recently addressed:

> A right is clearly established when it is "sufficiently clear that every reasonable official would have understood that what he is doing violates that right." *Mullenix v. Luna*, 577 U.S. 7, 11, (2015) (per curiam) (internal quotation marks omitted). Although "this Court's case law does not require a case directly on point for a right to be clearly established, existing precedent must have placed the statutory or constitutional question beyond debate." White, 137 S. Ct., at 551 (alterations and internal quotation marks omitted). This inquiry "must be undertaken in light of the specific context of the case, not as a broad general proposition." *Brosseau v. Haugen*, 543 U.S. 194, 198, 125 S. Ct. 596, 160 L.Ed.2d 583 (2004) (per curiam) (internal quotation marks omitted).

Rivas-Villegas v. Cortesluna, 142 S. Ct. 4, 7–8 (2021). If both parts of the qualified immunity test are resolved in the affirmative, then the doctrine of qualified immunity does not apply, and the case can proceed. The court may address the two factors in whichever order it deems appropriate based on several factors, not the least of which is judicial economy. *Pearson v. Callahan*, 555 U.S. 223, 227 (2009). If confirmed, I will continue to follow the precedents of the Supreme Court and the Seventh Circuit with respect to claims of qualified immunity.

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

Response: As a sitting United States Magistrate Judge and as a circuit judge nominee, it would not be appropriate for me to comment on whether qualified immunity sufficiently protects law enforcement officers. I will continue to follow all binding Supreme Court and Seventh Circuit precedent with respect to claims of qualified immunity.

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

Response: As a sitting United States Magistrate Judge and as a circuit judge nominee, it would not be appropriate for me to comment on whether qualified immunity sufficiently protects law enforcement officers. I will follow all binding Supreme Court and Seventh Circuit precedent with respect to claims of qualified immunity.

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

a. What experience do you have with copyright law?

Response: In my four years as a United States Magistrate Judge, I have presided over a small number of discovery matters and other non-dispositive motions in copyright cases.

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

Response: In my four years as a United States Magistrate Judge, and over 12 years as an Assistant United States Attorney, and two years of clerking in federal courts, I have not had significant experience with the Digital Millennium Copyright Act.

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

Response: In my four years as a United States Magistrate Judge, and over 12 years as an Assistant United States Attorney, and two years of clerking in federal courts, I have not had significant experience with intermediary liability for online service providers that host unlawful content posted by users.

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

Response: As a United States Magistrate Judge, I have presided over numerous cases involving alleged violations of a plaintiff's right to free speech under the First Amendment. Based on a search of Westlaw, I found no opinions I authored that involved the intersection of free speech and intellectual property issues, including copyright.

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

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

When interpreting statutes as United States Magistrate Judge, I follow binding precedent where a federal statutory or regulatory provision has been interpreted by the Supreme Court or the Seventh Circuit. If there is no binding precedent, I begin with the plain language of the pertinent statute or regulation, including the statutory definitions. *Exxon Mobil Corp. v. Allapattah Servs., Inc*., 545 U.S. 546, 568 (2005) (a lower court judge must first look at the statutory text because "the authoritative statement is the statutory text, not the legislative history or any other extrinsic material."). The Supreme Court has explained that with statutory construction, "the starting point for interpreting a statute is the language of the statute itself." Consumer *Prod. Safety Comm'n v. GTE Sylvania, Inc.,* 447 U.S. 102, 108 (1980). See also *Bostock v. Clayton Cnty., Ga.,* 140 S. Ct. 1731, 1749 (2020). If the meaning is "unambiguous and 'the statutory scheme is coherent and consistent,'" then "the inquiry ceases." *Kingdomware Techs., Inc. v. United States*, 136 S. Ct. 1969, 1976 (2016).

The Supreme Court has instructed that federal courts "do not resort to legislative history to cloud a statutory text that is clear." *Ratzlaf v. United States*, 510 U.S. 135, 147–48 (1994); see also *Milner v. Dep't of the Navy*, 562 U.S. 562, 574 (2011)

("Legislative history, for those who take it into account, is meant to clear up ambiguity, not create it."). If the text is ambiguous, the Seventh Circuit has held that resorting to the legislative history may be necessary. *Five Points Rd. Joint Venture v. Johanns*, 542 F.3d 1121, 1128 (7th Cir. 2008). Although the Supreme Court has not gone so far as to deem "legislative history inherently unreliable in all circumstances," it has cautioned, however, that "legislative history is itself often murky, ambiguous, and contradictory*." Exxon Mobil Corp*., 545 U.S. at 568-69. The Supreme Court has, however, recognized that legislative history may be useful for a different purpose, such as to "ferret out shifts in linguistic usage or subtle distinctions between literal and ordinary meaning." *Bostock*, 140 S. Ct. at 1750. As a United States Magistrate Judge, I adhere to binding precedent guiding that legislative history is to be consulted if and only if the statutory text in question is ambiguous.

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: An expert federal agency's advice or analysis as to the interpretation of legislative text, as contained in an agency opinion letter, policy statement, agency manual, or enforcement guideline, receives *Skidmore* deference. *See Skidmore v. Swift*, 323 U.S. 134 (1944). Applying *Skidmore* deference, the agency's advice and analysis is "entitled to respect," but only to the extent that they are persuasive, which is not the level of deference afforded under the *Chevron* doctrine. *Christensen v. Harris Cty.*, 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 United States Magistrate Judge, my role is to evaluate the facts of the specific case before me and apply the governing Supreme Court and Seventh Circuit precedent to those facts. As a sitting federal judge and a circuit judge nominee, it would be inappropriate for me to predetermine to what extent 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.

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

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

Response: In interpreting the Digital Millennium Copyright Act, judges must utilize the same tools that are available to them in interpreting all statutes: the statutory language, precedential opinions, the canons of statutory construction, persuasive authority from other circuits, precedential authority interpreting similar statutes and, if necessary, legislative history.

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 the response to Question 14(a).

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

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

Response: In the Southern District of Indiana, cases are randomly assigned to district judges and magistrate judges limiting the ability for litigants to engage in "judge shopping" and "forum shopping." Moreover, as a member of the judiciary, I am charged with ensuring that all litigants have a meaningful opportunity to be heard, to equal access to the courts, and that all of my decisions are made in a fair and impartial manner. It would be premature and inappropriate for me to express an opinion on a matter presented as what something "appears to have led to" in regard to potential "judge shopping" or "forum shopping."

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

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

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

Response: Please see my response to Question 15(a). I have never taken steps to try an attract a particular case or a type of litigant to my courtroom.

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

Response: As a United States Magistrate Judge for the Southern District of Indiana, I have not observed the concentration of certain types of cases with one particular judge or a certain division.

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: In the Southern District of Indiana, cases are randomly assigned to district judges and magistrate judges limiting the ability for litigants to engage in "judge shopping" and "forum shopping." Moreover, as a member of the judiciary, I am charged with ensuring that all litigants have a meaningful opportunity to be heard, to equal access to the courts, and that all of my decisions are made in a fair and impartial manner. As a sitting judge, my decisions are grounded in law and precedent and it would be inappropriate for me to express an opinion on a supposition of facts not before me, briefed and argued and presented for decision.

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

Response: Please see my answer to Question 16(a).

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

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

Response: As a sitting United States Magistrate Judge and a circuit judicial nominee, it would be inappropriate for me to comment on conduct as outlined in the question.

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

Response: As a sitting United States Magistrate Judge and a circuit judicial nominee, it would be inappropriate for me to comment on conduct as outlined in the question.