Senator Chuck Grassley, Ranking Member
Questions for the Record
Tana Lin
Judicial Nominee to the U.S. District Court for the Western District of Washington

1. **Last week, an editorial board member of *The New York Times* editorial board appeared on MSNBC and stated that she saw "dozens of American flags" on Long Island pickup trucks, which she described as "just disturbing." Do you agree that flying the American flag is a way to honor the United States of America? Why or why not?**

   RESPONSE: I am not aware of this statement or the context in which it was made. In general, I believe that flying the American flag is one way in which a person may choose to express support for the United States of America.

2. **In the context of federal case law, what is super precedent? Which cases, if any, count as super precedent?**

   RESPONSE: The term "super precedent" is not a term used or defined by the Supreme Court. If confirmed as a district court judge, I will be bound to faithfully apply all binding precedents of the Supreme Court.

3. **Is it legal for police to stop and frisk someone based on a reasonable suspicion of involvement in criminal activity?**

   RESPONSE: The Supreme Court has held that a police officer may briefly stop a person when the officer "observes unusual conduct which leads [the officer] reasonably to conclude in light of [the officer's] experience that criminal activity may be afoot." *Terry v. Ohio*, 392 U.S. 1, 30 (1968). Under those circumstances, the officer may "briefly stop" the suspicious person to make "reasonable inquiries'" aimed at confirming or dispelling the officer's suspicions. *Minnesota v. Dickerson*, 508 U.S. 366, 373, (1993). The officer may then conduct a frisk or search of the outer clothing of the person if the officer has reasonable grounds to believe that the person is armed and dangerous. *Terry*, 392 U.S. at 30. Each of the two elements, *i.e.* the stop and the frisk, must be analyzed separately with the reasonableness of each element independently determined. *United States v. Brown*, 996 F.3d 998, 1004 (9th Cir. 2021) (quoting *United States v. Thomas*, 863 F.2d 622, 628 (9th Cir. 1988)).

4. **During the course of your legal practice, have you ever taken a representation of violent-crime victims?**

   RESPONSE: I have never been asked to represent the victim of a violent crime. However, as a public defender, I interviewed a number of victims. I greatly appreciated

that they were willing to share their stories with me, and what they shared with me about their experiences has stayed with me. If confirmed as a judge, I will make sure that all parties before me feel and are genuinely heard.

5. **Should law firms undertake the pro bono prosecution of crimes?**

   RESPONSE: I am aware that government entities at times hire outside counsel from private law firms to assist or undertake the prosecution of crimes. Such policy decisions are not within the purview of the judiciary.

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

   RESPONSE: I am not familiar with Judge Brown Jackson's statement. I believe the Constitution was drafted to be an enduring document that expressed core principles that would act as a consistent guide over time.

7. Is it possible for private parties—like law firms, retired prosecutors, or retired judges—to prosecute federal criminals in the absence of charges being actively pursued by federal authorities?

   RESPONSE: To the best of my knowledge, no.

8. **The Federalist Society is an organization of conservatives and libertarians dedicated to the rule of law and legal reform. Would you hire a member of the Federalist Society to serve in your chambers as a law clerk?**

   RESPONSE: I will consider as a law clerk all qualified applicants.

9. **Absent a traditional conflict of interest, should paying clients of a law firm be able to prevent other paying clients from engaging the firm?**

   RESPONSE: I believe this is a decision that should be made by an individual law firm as long as it does not run afoul of any ethical rules.

10. **Should paying clients be able to influence which pro bono clients engage a law firm?**

    RESPONSE: I believe this is a decision that should be made by an individual law firm as long as it does not run afoul of any ethical rules.

11. **As a matter of legal ethics do you agree with the proposition that some civil clients don't deserve representation on account of their identity?**

RESPONSE: No.

12. **Do you agree with the propositions that some clients don't deserve representation on account of their:**

    a. **Heinous crimes?**
    b. **Political beliefs?**
    c. **Religious beliefs?**

    RESPONSE: No.

13. **Should judicial decisions take into consideration principles of social "equity"?**

    RESPONSE: Judges are to resolve cases and controversies that come before them based solely on the facts of the specific case, the issues and claims raised by the parties, and the applicable law.

14. **Is climate change real?**

    RESPONSE: If confirmed as a district court judge, I will follow the same process for considering cases, regardless of the subject matter. I will (1) evaluate the facts of the particular case (2) consider the claims, issues, and arguments presented by the parties and (3) carefully research, analyze, and apply the applicable law. In cases where expert testimony is submitted, I will apply the rules set forth in Article VII of the Federal Rules of Evidence as well as the standard set forth in *Daubert v. Merrell Dow Pharmaceuticals Inc.*, 509 U.S. 579 (1993) and its progeny. Further, I will faithfully apply all binding Supreme Court and Ninth Circuit precedents. Therefore, my personal opinions regarding the issue of climate change will be of no moment.

15. **Is gun violence a public-health crisis?**

    RESPONSE: Gun violence is an important issue facing our society and a crisis that local, state, and federal elected officials are currently discussing. If confirmed as a district court judge, I will follow the same process for considering cases, regardless of the subject matter. I will (1) evaluate the facts of the particular case (2) consider the claims, issues, and arguments presented by the parties and (3) carefully research, analyze, and apply the applicable law. Further, I will faithfully apply all binding Supreme Court and Ninth Circuit precedents. Therefore, my personal opinions regarding the issue of gun violence will be of no moment.

16. **Can someone change his or her biological sex?**

    RESPONSE: If confirmed as a district court judge, I will follow the same process for considering cases, regardless of the subject matter. I will (1) evaluate the facts of the

particular case (2) consider the claims, issues, and arguments presented by the parties and (3) carefully research, analyze, and apply the applicable law. In cases where expert testimony is submitted, I will apply the rules set forth in Article VII of the Federal Rules of Evidence as well as the standard set forth in *Daubert v. Merrell Dow Pharmaceuticals Inc.*, 509 U.S. 579 (1993) and its progeny. Further, I will faithfully apply all binding Supreme Court and Ninth Circuit precedents. Therefore, my personal opinions regarding whether one can change his or her biological sex will be of no moment.

17. **You can answer the following questions yes or no:**
    a. **Was *Brown v. Board of Education* correctly decided?**
    b. **Was *Loving v. Virginia* correctly decided?**
    c. **Was *Griswold v. Connecticut* correctly decided?**
    d. **Was *Roe v. Wade* correctly decided?**
    e. **Was *Planned Parenthood v. Casey* correctly decided?**
    f. **Was *Gonzales v. Carhart* correctly decided?**
    g. **Was *District of Columbia v. Heller* correctly decided?**
    h. **Was *McDonald v. City of Chicago* correctly decided?**
    i. **Was *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* correctly decided?**
    j. **Was *Sturgeon v. Frost* correctly decided?**
    k. **Was *Juliana v. United States* (9th Cir.) correctly decided?**
    l. **Was *Rust v. Sullivan* correctly decided?**

    RESPONSE: It is generally not appropriate for a judicial nominee to comment on the results or reasoning in Supreme Court or Ninth Circuit decisions. All Supreme Court and Ninth Circuit precedent will be binding upon me if I am confirmed as a district court judge. I am, however, aware that prior judicial nominees have made exceptions to the practice of declining comment on the merits of Supreme Court decisions to acknowledge that of the cases listed above, the principles underlying *Brown v. Board of Education* and *Loving v. Virginia* are so foundational that they are beyond dispute and unlikely to be revisited by the Supreme Court. With this caveat, I believe that I can state that I believe these two cases were correctly decided without violating my duties under the Judicial Canons. I reiterate with respect to all other cases mentioned, to the extent a case is binding Supreme Court or Ninth Circuit precedent, I would follow it regardless.

18. **Is threatening Supreme Court Justices right or wrong?**

    RESPONSE: It is wrong to threaten anyone.

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

    RESPONSE: Criticism of an opinion focuses on the analysis or reasoning provided in the opinion; personal attacks focus on the individual.

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

RESPONSE: As a pending judicial nominee, it would be inappropriate for me to comment on this question.

21. **During your hearing you repeatedly distinguished between the national ACLU—which is currently under fire for abandoning its historical commitment to free speech in order to cater to progressive policy causes—and the Washington ALCU—of which you were the board president through 2021. This is from the Washington ACLU's website:**

What is the difference between defunding the police and "the divestment/reinvestment approach to policing?

RESPONSE: As a board member of the ACLU of Washington, I am broadly familiar with the non-partisan work and mission of the organization to protect and advance freedom, equity, and justice for everyone in Washington. I was not, however, involved in the day to day work of the organization. I believe the term "defunding the police" means different things to different people. I understand the divestment/reinvestment approach to policing referenced on the ACLU of Washington website to encompass exploring solutions to reduce police violence (for example, banning chokeholds and emphasizing de-escalation training) and increase police accountability. I note that elected officials at all levels of government are in the midst of grappling with the issue of police reform and what policy changes might be appropriate. However, policy changes are the purview of elected officials and not the courts. If confirmed as a district court judge, I will follow the same process for considering cases, regardless of the subject matter. I will (1) evaluate the facts of the particular case (2) consider the claims, issues, and arguments presented by

the parties and (3) carefully research, analyze, and apply the applicable law. Further, I will faithfully apply all binding Supreme Court and Ninth Circuit precedents. Therefore, my personal opinions regarding this issue will be of no moment.

22. **Was it correct for people to oppose Judge Eric Miller's nomination to the Ninth Circuit because of the clients he represented?**

    RESPONSE: I am not familiar with the issues surrounding Judge Miller's nomination. In general, I do not believe that a nominee should be opposed solely because of the clients he or she represented.

23. **A March 12, 2021, ACLU of Washington letter (including your name in the letterhead) requested that the "Washington State Department of Correction (DOC) modify current restrictions on Native American religious ceremony due to the harmful impact on incarcerated Native American individuals' religious freedom." Washington State is also home to multiple other well publicized cases involving religious liberty, such as the case involving Arlene's Flowers (flowers for same-sex weddings) and *Stormans v. Wiesman* (pharmacists dispensing emergency contraception).**

    RESPONSE: The ACLU of Washington had a standard practice that pre-dated my tenure on the board to include the name of the board president on its letterhead. As with all of the ACLU letters I submitted with my questionnaire, I did not draft, review, or edit any of them, including the one mentioned in this question.

    a. **Do you believe that every individual has a right to freedom of religion**?
       RESPONSE: Yes.

    b. **What position, if any, did the ACLU of Washington take in the religious freedom litigation involving Barronelle Stutzman (Arlene's Flowers) or Kevin Stormans?**

       RESPONSE: As a board member of the ACLU of Washington, I am broadly familiar with the non-partisan work and mission of the organization to protect and advance freedom, equity, and justice for everyone in Washington. I was not, however, involved in the day to day work of the organization.

       To the best of my knowledge, in 2013 (I joined the board in 2016), the ACLU of Washington filed a complaint on behalf of Plaintiffs Robert Ingersoll and Curt Freed, alleging that the refusal of Arlene's Flowers to sell flowers to the couple due to their sexual orientation violated the Washington Law Against Discrimination.

To the best of my knowledge, in 2007 (I joined the board in 2016), the ACLU of Washington — in coalition with several other organizations —intervened in the case of *Stormans, Inc. v. Selecky* on behalf of seven individuals: five women who claimed to have been affected by the conduct of pharmacists opposed to Plan B contraceptives and two HIV-positive individuals who expressed concerns about access to vital medicines they needed to survive.

c. **What considerations does the ACLU of Washington take in deciding whether or not to involve itself in a religious liberty matter?**

RESPONSE: As president of the board of directors for the ACLU WA, I led the board in generally overseeing the organization including, for example: setting and monitoring the mission and broad priorities of the organization; reviewing financial documents to ensure the financial health and stability of the organization; supporting and overseeing the first new executive director the organization had hired in nearly 40 years; and working with the board's governance committee to examine — and implement where appropriate — best practices for non-profit boards. However, as a board member, I was not involved in the day-to-day work of the organization, such as decisions involving the litigation, advocacy or legislative docket of the organization. Therefore, I do not know the details of every single litigation or advocacy position of the organization.

24. **How do you understand the difference, if any, between freedom of religion and freedom of worship?**

RESPONSE: I understand that there are discussions regarding whether there is a difference between these two phrases and believe that they can mean different things to different people. My understanding is that some people interpret the phrase "freedom of religion" to be a more expansive concept referring to broader ideas of religious faith, while the phrase "freedom of worship" is interpreted to be more confined to an individual's religious practices.

25. **Does religious freedom entail a right to externalize costs on to third parties?**

RESPONSE: As a pending judicial nominee, it would be inappropriate for me to comment on this issue that I understand is currently being litigated in the courts. If confirmed as a district court judge and were this issue to arise, I would start by looking to Supreme Court precedents such as *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct. 2367 (2020), and *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014).

26. **Do you agree with Thomas Jefferson that the First Amendment erects "a wall of separation between Church & State"?**

RESPONSE: I am aware that the phrase has been referenced in some Supreme Court jurisprudence. If confirmed as a district court judge, I will be bound to faithfully apply all binding precedents of the Supreme Court and the Ninth Circuit.

27. **In a March 12, 2021, letter (including your name on the letterhead), the ACLU of Washington letter requested "Increase[d] Access to Native American Religious Activities at Airway Heights Corrections Center." You requested this increased activity level during the COVID-19 pandemic, recognizing that the services had to be "modified." Does a government have the power to restrict the ability of their citizens to freely practice their religion on the basis of a public health emergency?**

RESPONSE: As I explained in response to Question 23, I did not draft, review, or edit the letter mentioned in this question. However, if confirmed as a district court judge and an issue regarding the free exercise of religion during a public health emergency arises, I will start by looking to Supreme Court precedent such as *Tandon v. Newsom*, 141 S.Ct. 1294 (2021), and *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S.Ct. 63 (2020). I will be bound to faithfully apply all binding precedents of the Supreme Court and Ninth Circuit.

28. **If the Justice Department determines that the prosecution of an individual is meritless and dismisses the case, is it appropriate for a District Judge to question the Department's motivations and appoint an amicus to continue the prosecution? Please explain why or why not.**

RESPONSE: The impartiality and independence of the judiciary is foundational to our democracy. Further, the power of the judiciary to assess the legality of decisions made by the executive and legislative branches is a foundational finding that is beyond dispute. *See Marbury v. Madison*, 5 U.S. 137 (1803). I cannot respond to a hypothetical without a full factual context. If confirmed as a district court judge, I will follow the same process for considering cases, regardless of the subject matter. I will (1) evaluate the facts of the particular case (2) consider the claims, issues, and arguments presented by the parties and (3) carefully research, analyze, and apply the applicable law.

29. **Over the course of your career, how many times have you spoken at events sponsored or hosted by the following liberal, "dark money" groups?**

    a. **American Constitution Society**
    b. **Arabella Advisors**
    c. **Demand Justice**
    d. **Fix the Court**

e. **Open Society Foundation**

RESPONSE: I have never spoken at events sponsored or hosted by any of the organizations listed in this question.

30. **In June 2018, the University of Washington College Republicans obtained a settlement from the University of Washington in the amount of $122,500, representing the legal fees generated from the College Republicans' suit against the school.[1] The University of Washington had instituted a policy requiring the payment of a security fee in the amount of $17,000 for the Club's attempt to hold a rally on February 10, 2018 with conservative group Patriot Prayer.**

    a. **Did the ACLU of Washington support the University of Washington College Republicans at all in this free-speech dispute?**

    RESPONSE: As a board member of the ACLU of Washington, I am broadly familiar with the non-partisan work and mission of the organization to protect and advance freedom, equity, and justice for everyone in Washington. I was not, however, involved in the day to day work of the organization. To the best of my knowledge, the ACLU of Washington was not involved in the suit by the University of Washington College Republicans against the University of Washington regarding the payment of a security fee.

    b. **If not, why not?**

    RESPONSE For the reasons stated in response to Questions 23.c. and 30.a., I do not know the answer to this question.

31. **The ACLU Washington represented the Seattle Mideast Awareness Campaign (SeaMAC) in its suit alleging violations of its free speech rights when SeaMAC submitted an ad to run on public buses expressing anti-Israel sentiment.[2]**

    a. **How many times has the ACLU of Washington represented "conservative" or even non-liberal speakers seeking to vindicate their rights under the First Amendment?**

    RESPONSE: For the reasons stated in response to Questions 23.c. and 30.a., I do not know the answer to this question.

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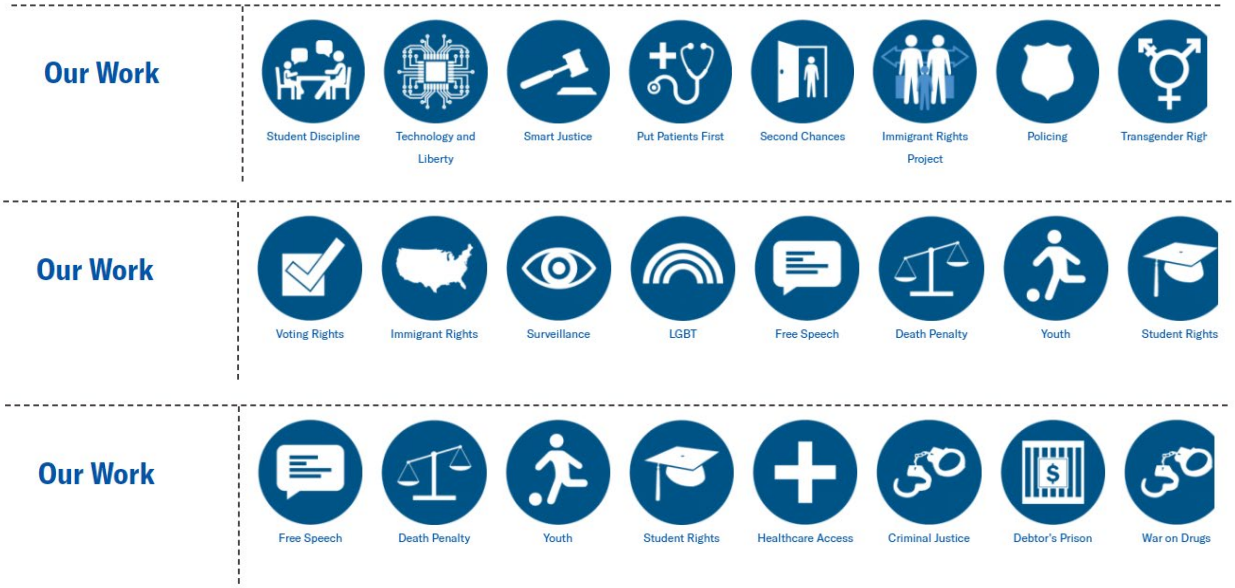
[1] Katherine Long, The Seattle Times, "UW to pay $122,500 in legal fees in settlement with College Republicans over free speech," June 18, 2018, available at: https://www.seattletimes.com/seattle-news/uw-to-pay-127000-in-legal-fees-in-settlement-with-college-republicans-over-free-speech/

[2] Kathleen Taylor, ACLU Washington, "Free Speech Means Protecting Controversial Speech," October 3, 2012, available at: https://www.aclu-wa.org/blog/free-speech-means-protecting-controversial-speech

b. **As an attorney have you ever personally defended the free speech rights of an individual or organization that you did not agree with politically?**

RESPONSE: I did not and do not specialize in free speech litigation. To the best of my recollection, I have never been asked to consider litigating a free speech case on behalf of any litigant over the course of my career.

32. During your hearing you repeatedly distinguished between the national ACLU—which is currently under fire for abandoning its historical commitment to free speech in order to cater to progressive policy causes—and the Washington ALCU—of which you were the board president through 2021. These images are from the ACLU of Washington website.



"Free Speech" is one of 20 different areas in which the ACLU of Washington works, including even the Dickensian field of "Debtor's Prison"

a. **During your time in the leadership of the ACLU of Washington, what percentage of the organization's work went to defending free speech?**

RESPONSE: For the reasons stated in response to Questions 23.c. and 30.a., I do not know the answer to this question.

b. **What policies, if any, did the ACLU of Washington adopt to balance protecting free speech against its potential "harm" to marginalized communities?**

RESPONSE: For the reasons stated in response to Questions 23.c. and 30.a., I do not know the answer to this question.

c. **Did you participate in any deliberations or decisions at the programmatic level to allocate or deallocate resources to free speech? If so what was the nature of those deliberations or decisions.**

RESPONSE: No. Please see my response to Questions 23.c. and 30.a.

33. **Do you agree that the First Amendment is more often a tool of the powerful than the oppressed?**

RESPONSE: I am not familiar with this statement or the context in which it has been made. If confirmed as a district court judge, I will be bound to faithfully apply all binding precedents of the Supreme Court and Ninth Circuit, including precedents regarding the First Amendment.

34. **Was the ACLU right or wrong to defend the rights of Nazis to march in Skokie, Illinois?**

RESPONSE: The work of the ACLU resulted in the Supreme Court decision in *Nat'l Socialist Party of Am. v. Vill. of Skokie*, 432 U.S. 43 (1977). If confirmed as a district court judge, I will be bound to faithfully apply all binding precedents of the Supreme Court and the Ninth Circuit. However, as a pending judicial nominee, it is inappropriate for me to comment on matters that could possibly come before the court, as First Amendment issues might. Further, if confirmed to be a district court judge, I will follow the same process for considering cases, regardless of the subject matter. I will (1) evaluate the facts of the particular case (2) consider the claims, issues, and arguments presented by the parties and (3) carefully research, analyze, and apply the applicable law. Therefore, any personal views that I might have regarding of the ACLU's decision to litigate the Skokie case would be of no moment.

35. **What is the legal basis for a nationwide injunction? What considerations would you consider as a district judge when deciding whether to grant one?**

RESPONSE: A plaintiff seeking a preliminary injunction must establish that (1) he is likely to succeed on the merits, (2) he is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in his favor, and (4) an injunction is in the public interest. *See, e.g., Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 668 (9th Cir. 2021). When the government is a party, the equities and public interest factors merge. *Id.* (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009). With regard to the scope of an injunction, the relief provided should be "no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs before the court…Where relief can be structured on an individual basis, it must be narrowly tailored to remedy the specific harm shown, but there is no general requirement that an injunction affect only the parties in the suit." *E.*

Bay Sanctuary Covenant, 993 F.3d at 680. (internal quotations marks and citations omitted). If confirmed as a district court judge, I will (1) evaluate the facts of the particular case (2) consider the claims, issues, and arguments presented by the parties and (3) apply these precedents as well as any other relevant Supreme Court or Ninth Circuit rulings with regard to nationwide injunctions.

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

RESPONSE: If confirmed as a district court judge, I would start by looking to the Supreme Court decisions in *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. City of Chicago*, 561 U.S. 742 (2010). Following these two decisions, the Ninth Circuit has established a two-step framework to review Second Amendment challenges. *Young v. Hawaii*, 992 F.3d 765 (9th Cir. 2021). The first step is to ask if the challenged law affects conduct that is protected by the Second Amendment. *Id.* at 783. If the challenged law burdens conduct protected by the Second Amendment, then the second step is to determine the appropriate level of scrutiny:

> If a regulation amounts to a destruction of the Second Amendment right, it is unconstitutional under any level of scrutiny; a law that implicates the core of the Second Amendment right and severely burdens that right receives strict scrutiny; and in other cases in which Second Amendment rights are affected in some lesser way, we apply intermediate scrutiny.

Id. at 784 (internal quotation marks omitted). If confirmed as a district court judge, I will be bound to faithfully apply these binding precedents.

37. **In your view, is a personal philosophical or religious objection to the death penalty on the part of the President a valid justification to abandon the defense of a death sentence on direct appeal?**

RESPONSE: As a general matter, under our system of government, Congress determines what conduct is unlawful and the applicable penalties for such conduct. For certain federal crimes, Congress has determined that the death penalty is an appropriate sentence, and the Supreme Court has held that the death penalty is constitutional. The President does not have the authority to unilaterally change the laws that Congress enacts or the penalties that Congress has prescribed for criminal offenses. However, the Constitution gives the President the authority to grant pardons, commutations, and reprieves. U.S. Const., Art. II, Sec. 2. With respect to the specific question posed, as a pending judicial nominee, it would be inappropriate for me to opine on a hypothetical without full factual context.

38. **In your view, is a personal philosophical or religious objection to the death penalty on the part of a District Judge a valid justification not to impose a death sentence?**

RESPONSE: If confirmed as a district court judge, I would follow federal law regarding the death penalty. With respect to the specific question posed, as a pending judicial nominee, it would be inappropriate for me to opine on a hypothetical without full factual context.

39. **Do state school-choice programs make private schools state actors for the purposes of the Americans with Disabilities Act?**

RESPONSE: If confirmed as a district court judge, I will follow the same process for considering cases, regardless of the subject matter. I will (1) evaluate the facts of the particular case (2) consider the claims, issues, and arguments presented by the parties and (3) carefully research, analyze, and apply the applicable law. As a pending judicial nominee, it is inappropriate for me to opine on this hypothetical without full context. If a case came before me that presented this question, I would want to carefully review the underlying facts in the record, the issues raised by the parties, and the applicable law before offering an opinion on this question.

40. **Does a law restrict abortion access if it requires doctors to provide medical care to children born alive following failed abortions?**

RESPONSE: If confirmed as a district court judge, I will follow the same process for considering cases, regardless of the subject matter. I will (1) evaluate the facts of the particular case (2) consider the claims, issues, and arguments presented by the parties and (3) carefully research, analyze, and apply the applicable law. As a pending judicial nominee, it is inappropriate for me to opine on this hypothetical without full context. If a case came before me that presented this question, I would want to carefully review the underlying facts in the record, the issues raised by the parties, and the applicable law before offering an opinion on this question. I am aware of the Born-Alive Infants Protection Act of 2002, as well as the Supreme Court's decision in *Planned Parenthood of SE Pennsylvania v. Casey*, 505 U.S. 833 (1992), and its progeny. If confirmed as a district court judge and an issue relating to this law arose, I would apply all applicable Supreme Court or Ninth Circuit precedent.

41. **On June 10, 2020, you signed a letter to Inspector General Horowitz criticizing the actions of then-Attorney General Bill Barr and President Trump for an event you described as a "photo op" in Lafayette Square on June 1, 2020 and demanding an immediate investigation into the events.[3] An Inspector General Report released on June 8, 2021, found the following:**

[3] SJQ 12(A) at *33 ("In particular, we are disturbed by Attorney General Barr's possible role in ordering law enforcement personnel to suppress a peaceful domestic protest in Lafayette Square on June 1, 2020, for the purpose of enabling President Trump to walk across the street from the White House and stage a photo op at St. John's Church, a politically motivated event in which Attorney General Barr participated.").

that the USPP had the authority and discretion to clear Lafayette Park and the surrounding areas on June 1. The evidence we obtained did not support a finding that the USPP cleared the park to allow the President to survey the damage and walk to St. John's Church. Instead, the evidence we reviewed showed that the USPP cleared the park to allow the contractor to safely install the antiscale fencing in response to destruction of property and injury to officers occurring on May 30 and 31. Further, the evidence showed that the USPP did not know about the President's potential movement until mid- to late afternoon on June 1—hours after it had begun developing its operational plan and the fencing contractor had arrived in the park.[4]

a. **Do you accept the results of the independent Inspector General investigation?**

RESPONSE: Yes.

b. **What commitments can you give me that you will not similarly jump to conclusions as a judge evaluating cases before you like you did when evaluating the clearing of Lafayette Square?**

RESPONSE: The letter to Inspector General Horowitz was signed by numerous former Department of Justice career alumni from both Democratic and Republican administrations. I signed the letter because I was deeply concerned with whether the principle of impartiality was being honored and because I believe strongly in the rule of law. I signed this letter in my personal capacity, and I was not a sitting judge when I signed it.

However, if confirmed as a district court judge, I will first and foremost remember that I will be in a completely different role: one that requires me to be impartial. I hope that my reputation as an advocate with both colleagues and opposing counsel is as a lawyer who has the highest ethics and integrity, advocates for her clients well within the bounds of the law, and is able to see the other side's perspective. Finally, I was grateful that the Standing Committee on the Federal Judiciary of the American Bar Association—which evaluates nominees for integrity, professional competence and judicial temperament—unanimously rated me "Well Qualified."

42. **In your career as a prosecutor, did you ever encounter a defendant who sought to withdraw his guilty plea?**

[4] Office of the Inspector General, Department of the Interior, "Review of U.S. Park Police Actions at Lafayette Park," June 8, 2021, available at: https://www.doioig.gov/reports/review-us-park-police-actions-lafayette-park

RESPONSE: I have never been a criminal prosecutor.

a. **In your career as a Staff Attorney for PDS, did you ever represent a client who sought to withdraw his guilty plea? Please provide an approximation of the number.**

   RESPONSE: I left PDS over 25 years ago. To the best of my memory, I am not aware of any client I had while a Staff Attorney for PDS who sought to withdraw a guilty plea.

b. **In your career, did you ever personally encounter a situation where the judge refused to accept a motion to dismiss with prejudice, filed by the government? If yes, please explain the circumstances and provide the citation**.

   RESPONSE: No.

43. **As a Staff Attorney for PDS, please provide an approximate number of clients that you represented who:**
    a. **Were charged with felon-in-possession cases?**
    b. **Were charged with child sex crimes?**
    c. **Were charged with firearms trafficking?**

RESPONSE: I left PDS over 25 years ago. I do not remember how many clients I represented who were charged with felon-in-possession cases. I do not remember for certain if I represented anyone charged with child sex crimes but, to the best of my memory, I do not believe I did. Similarly, to the best of my recollection, I do not believe I represented anyone charged with firearms trafficking.

44. **As a public defender did you ever offer a Second Amendment defense of a client charged with a gun crime?**

RESPONSE: No.

45. **In your SJQ you co-authored a piece titled "Abortion Rights and the 1990 Court Reform Initiative." In it, you acknowledge that "Californians need not be affected by a *Roe* reversal. The constitutional right to an abortion was established in this state not by the 1973 decision of the United States Supreme Court in *Roe*, but by the 1969 decision of the California Supreme Court in *People v. Belous* (1969) 71 CAL.2d 954." Do you still agree that it would not affect abortion access in California if the Supreme Court overturned *Roe v. Wade*?**

RESPONSE: I co-wrote the article referenced in this question during a summer clerkship after my first year of law school over 30 years ago. The article provided a history of abortion rights in California as of approximately 1990 and discussed the possible impact of an initiative that was going to be on the 1990 ballot. Since that time, I have not reviewed the state of the caselaw or legislation regarding abortion in California.

46. **Under the Religious Freedom Restoration Act the federal government cannot "substantially burden a person's exercise of religion."**

    a. **Who decides whether a burden exists on the exercise of religion, the government or the religious adherent?**

    RESPONSE: To establish a prima facie case under the Religious Freedom Restoration Act, a plaintiff must establish two elements: (1) the activities the plaintiff claims are burdened by the government action are an "exercise of religion;" and (2) the government action "substantially burden[s]" the plaintiff's exercise of religion. 42 U.S.C.A. § 2000bb-1(a)). *See also Navajo Nation v. U.S. Forest Serv*., 535 F.3d 1058, 1068 (9th Cir. 2008). Should a plaintiff establish these two elements, the burden of persuasion shifts to the government to prove that the challenged government action is in furtherance of a "compelling governmental interest" and is implemented by "the least restrictive means." *Id.* While a court (or jury) will ultimately decide if the burden of proof has been met, the Supreme Court has noted that courts should neither act as "arbiters of scriptural interpretation," *Thomas v. Rev. Bd. of Indiana Emp. Sec. Div*., 450 U.S. 707, 716 (1981), nor "undertake to dissect religious beliefs." *Id*. at 715. Accordingly, the "narrow function of a reviewing court" is to determine whether a party's asserted religious beliefs are "an honest conviction." *Thomas*, 450 U.S. at 715.

    b. **How is a burden deemed to be "substantial[]" under current caselaw? Do you agree with this?**

    RESPONSE: If confirmed as a district court judge, I would start by looking to Supreme Court and Ninth Circuit precedents. "Under RFRA, a 'substantial burden' is imposed only when individuals are forced to choose between following the tenets of their religion and receiving a governmental benefit [ ]or coerced to act contrary to their religious beliefs by the threat of civil or criminal sanctions [ ]." *Navajo Nation v. U.S. Forest Serv*., 535 F.3d 1058, 1069–70 (9th Cir. 2008). In *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014), the Supreme Court held that the Affordable Care Act imposed a substantial burden on the plaintiffs' exercise of religion because it required "that they engage in conduct that seriously violates their religious beliefs," and if they did not comply, they would have faced

"substantial economic consequences" in the form of "substantial" penalty assessments. *Id.* at 720-721. All Supreme Court and Ninth Circuit precedent will be binding upon me should I be confirmed. As a pending judicial nominee, it is inappropriate to opine on a matter that could possibly come before the court.

47. **Do you agree with the Supreme Court that the free exercise clause lies at the heart of a pluralistic society (*Bostock v. Clayton County*)? If so, does that mean that the Free Exercise Clause requires that religious organizations be free to act consistently with their beliefs in the public square?**

RESPONSE: The Supreme Court has stated, "[w]e are [ ] deeply concerned with preserving the promise of the free exercise of religion enshrined in our Constitution; that guarantee lies at the heart of our pluralistic society." *Bostock v. Clayton County*, 140 S. Ct. 1731, 1754 (2020). If confirmed as a district court judge, I will be bound to faithfully apply all binding precedents of the Supreme Court.

48. **Does illegal immigration impose costs on border communities?**

RESPONSE: I have not studied the issue of the cost of immigration on border communities and any costs are best weighed by policymakers. If confirmed as a district court judge, I will follow the same process for considering cases, regardless of the subject matter and including cases involving immigration. I will (1) evaluate the facts of the particular case (2) consider the claims, issues, and arguments presented by the parties and (3) carefully research, analyze, and apply the applicable law.

49. **When was the last time you visited the U.S.-Mexico border?**

RESPONSE: I believe I last visited the US-Mexico border when I was in middle school.

50. **When was the last time you visited the U.S.-Mexico border outside of a port of entry?**

RESPONSE: I have never visited the US-Mexico border outside of a port of entry.

51. **In a November 2020 ACLU of Washington letter, you wrote that:**

[t]he work of defending our rights and fighting for process started long before the current president was sworn in—and it won't end when he leaves office in January. You have our vow that we will continue fighting for your right and holding our leaders accountable, regardless of political party. The ACLU sued the Trump administration and his predecessor's administration countless times. Our approach to the Biden administration will be no different.

a. **How many letters has the ACLU of Washington (or have you) written on behalf of the thousands of unaccompanied minors flooding the border?**
i
RESPONSE: As I explained in response to Question 23, I did not draft, review, or edit the letter mentioned in this question. For the reasons stated in response to Questions 23.c. and 30.a., I do not know the answer to this question with regard to the ACLU of Washington. I have not written any letters on this subject.

b. **How many lawsuits against the Biden Administration has the ACLU of Washington (or have you) filed on behalf of the thousands of unaccompanied minors flooding the border?**

RESPONSE: For the reasons stated in response to Questions 23.c. and 30.a., I do not know the answer to this question with regard to the ACLU of Washington. I have not filed any lawsuits on this subject.

c. **How many meetings has the ALCU of Washington requested with the Biden Administration "Border Czar," Kamala Harris?**

RESPONSE: For the reasons stated in response to Questions 23.c. and 30.a., I do not know the answer to this question with regard to the ACLU of Washington.

52. **Do Blaine Amendments violate the Constitution?**

RESPONSE: Blaine Amendments involve the question of public funding for religious schools. As a pending judicial nominee, it would be inappropriate to opine on a matter that could possibly come before the court. If confirmed as a district court judge and were a Blaine Amendment issue to arise, I would start by looking to Supreme Court precedent such as *Espinoza v. Montana Department of Revenue*, 140 S. Ct. 2246 (2020). I would be bound by the relevant Supreme Court and Ninth Circuit precedents on this issue.

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

RESPONSE: Washington has a judicial selection commission. Senators Murray and Cantwell engaged a bipartisan committee to screen and interview candidates, and the committee provided the senators with a list of candidates they recommended for the position. On January 3, 2021, I submitted an application, and I interviewed with the committee on February 11, 2021.

I interviewed with the senior executive team for Senator Murray on February 24, 2021 and Senator Cantwell on February 26, 2021. Senator Murray interviewed me on March 8, 2021.

On March 9, 2021, I interviewed with attorneys from the White House Counsel's Office. Since March 12, 2021, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On April 29, 2021, the President announced his intent to nominate me, and my nomination was submitted to the Senate.

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

    a. **Did anyone do so on your behalf?**

    RESPONSE: I neither spoke with anyone associated with this organization or known subsidiaries nor had anyone do so on my behalf.

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

    a. **Did anyone do so on your behalf?**

    RESPONSE: I neither spoke with anyone associated with this organization or known subsidiaries nor had anyone do so on my behalf.

56. **During your selection process, did you talk with any officials from or anyone directly associated with Arabella Advisors? 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, or any other such Arabella dark-money fund that is still shrouded.**

    a. **Did anyone do so on your behalf?**

    RESPONSE: I neither spoke with anyone associated with this organization or known subsidiaries nor had anyone do so on my behalf.

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

    a. **Did anyone do so on your behalf?**

    RESPONSE: I neither spoke with anyone associated with this organization nor had anyone do so on my behalf.

58. **List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding your nomination.**

RESPONSE: On March 9, 2021, I interviewed with attorneys from the nominations team for the White House Counsel's Office. Since that time, I have been in regular contact with the Office of Legal Policy at the Department of Justice and the White House regarding my nomination.

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

RESPONSE: The process I used to answer these questions was as follows: I carefully read each question, drew from my experience where appropriate, conducted legal research where needed, and drafted answers to each question. I shared my draft answers with employees of the Office of Legal Policy at the Department of Justice and received their feedback. I then re-reviewed and finalized the response to each question based on my independent judgment.

Nomination of Tana Lin
to be United States District Judge for the Western District of Washington Questions for the Record
Submitted June 16, 2021

QUESTIONS FROM SENATOR COTTON

1. **Since becoming a legal adult, have you ever been arrested for or accused of committing a hate crime against any person?**

   RESPONSE: No.

2. **Since becoming a legal adult, have you ever been arrested for or accused of committing a violent crime against any person?**

   RESPONSE: No.

3. **Was *D.C. v. Heller*, 554 U.S. 570 (2008) rightly decided?**

   RESPONSE: It is generally not appropriate for a judicial nominee to comment on the results or reasoning in Supreme Court decisions. All Supreme Court precedent will be binding upon me if I am confirmed as a district court judge.

4. **Is the Second Amendment right to keep and bear arms an individual right belonging to individual persons, or a collective right that only belongs to a group such as a militia?**

   RESPONSE: The Supreme Court held that the Second Amendment confers "an individual right to keep and bear arms." *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008). The Supreme Court also has held that the Second Amendment right to keep and bear arms is a fundamental right that applies to the states as well the federal government. See *McDonald v. City of Chicago*, 561 U.S. 742, 750 (2010).

5. **Please describe what you believe to be the Supreme Court's holding in *Greer v. United States*, 593 U.S. _____ (2021).**

   RESPONSE: 18 U.S.C. § 922(g)(1) prohibits the possession of firearms by those who have been convicted of a crime punishable by more than one year in prison which is the basis for a federal "felon-in-possession" charge. In *Greer*, the Supreme Court established that in order for a defendant convicted of being a felon-in-possession to obtain a new trial or plea hearing under a plain error standard for unpreserved claims, the defendant must "make[ ] a sufficient argument or representation on appeal that he would have

presented evidence at trial that he did not in fact know he was a felon." *Greer v. U.S.*, No. 19-8709, 2021 WL 2405146, at *7 (U.S. June 14, 2021).

6. **Please describe what you believe to be the Supreme Court's holding in *Terry v. United States*, 593 U.S. _____ (2021).**

   RESPONSE: In 2010, Congress passed the Fair Sentencing Act, which reduced the disparity between crack and cocaine sentences and also eliminated the mandatory five-year sentence for crack. In 2018, Congress passed the First Step Act, which made sentencing reforms retroactive and, therefore, past offenders eligible for resentencing. In *Terry*, the Supreme Court held that an offender is eligible for a sentence reduction under the First Step Act only if he previously received a sentence for a "covered offense," which is "a violation of a Federal criminal statute, the statutory penalties for which were modified by" certain provisions in the Fair Sentencing Act. *Terry v. U.S.*, No. 20-5904, 2021 WL 2405145, at *4 (U.S. June 14, 2021) (internal quotation marks and citations omitted). As the penalty for the subsection under which Defendant had been convicted had not changed under the Fair Sentencing Act, the Supreme Court affirmed that the Defendant was not entitled to relief.

7. **Please describe what you believe to be the Supreme Court's holding in *Jones v. Mississippi*, 593 U.S. _____ (2021).**

   RESPONSE: The Supreme Court held that the Eighth Amendment does not require the sentencing judge to make a separate factual finding of permanent incorrigibility, *Jones v. Mississippi*, 141 S. Ct. 1307, 1318–19 (2021), or an explanation on the record with an implicit finding of permanent incorrigibility, *id.* at 1321, before imposing a life-without-parole sentence on an individual convicted of a murder committed before the age of eighteen.

8. **Please describe what you believe to be the Supreme Court's holding in *Tandon v. Newsom*, 593 U.S. _____ (2021).**

   RESPONSE: The Supreme Court held that the "myriad exceptions and accommodations" for secular versus comparable religious activities contained in the State of California's restrictions on private gatherings during the COVID-19 pandemic triggered the strict scrutiny standard of review. *Tandon v. Newsom*, 141 S. Ct. 1294, 1298 (2021). Further, the State should be required to explain why it could not safely permit at-home worshipers to gather in larger numbers while using the precautions used in secular activities. *Id.* at 1297.

9. **Please describe what you believe to be the Supreme Court's holding in *Sanchez v. Mayorkas*, 593 U.S. _____ (2021).**

   RESPONSE: Pursuant to 8 U.S.C. § 1255, a "nonimmigrant" (or foreign national lawfully present in this country on a designated, temporary basis) can obtain an "[a]djustment of status" to become a Legal Permanent Resident. In *Sanchez*, the Supreme Court held that an individual who was not initially lawfully admitted to the United States is ineligible for a status adjustment to Legal Permanent Resident under Section 1225. *Sanchez v. Mayorkas*, No. 20-315, 2021 WL 2301964, at *5 (U.S. June 7, 2021). The petitioner received temporary protected status at some point after entering the United States but since he originally entered the country illegally, he cannot become a permanent resident.

10. **What is your view of arbitration as a litigation alternative in civil cases?**

    RESPONSE: Arbitration can be an appropriate and useful alternative to litigation in civil cases.

11. **Please describe with particularity the process by which you answered these questions and the written questions of the other members of the Committee.**

    RESPONSE: The process I used to answer these questions was as follows: I carefully read each question, drew from my experience where appropriate, conducted legal research where needed, and drafted answers to each question. I shared my draft answers with employees of the Office of Legal Policy at the Department of Justice and received their feedback. I then re-reviewed and finalized the response to each question based on my independent judgment.

12. **Did any individual outside of the United States federal government write or draft your answers to these questions or the written questions of the other members of the Committee? If so, please list each such individual who wrote or drafted your answers. If government officials assisted with writing or drafting your answers, please also identify the department or agency with which those officials are employed.**

    RESPONSE: No.

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

Questions for the Record for Tana Lin, Nominee for the United States District Court for the Western District of Washington

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. **Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's philosophy from Warren, Burger, Rehnquist, or Robert's Courts is most analogous with yours.**

   RESPONSE: I would approach each case first and foremost with an open mind and also with humility as well as a recognition that the role of a judge is a limited one. If I were to be confirmed, my process as a district court judge would be to carefully look at the facts

of the specific case before me, impartially apply the applicable law, and limit my findings to those issues raised by the parties. I have not studied the judicial philosophies of justices on the Warren, Burger, Rehnquist or Roberts courts and am, therefore, without sufficient knowledge to be able to draw any analogy with what I have described as mine.

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

RESPONSE: I believe the Constitution was drafted to be an enduring document that expressed core principles that would act as a consistent guide over time. If confirmed as a district court judge, I will be bound to faithfully apply all binding precedents of the Supreme Court and the Ninth Circuit. This includes a duty to apply all precedents that pertain to methods of constitutional interpretation.

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

RESPONSE: As a pending judicial nominee, it would be inappropriate for me to comment on this question. If confirmed as a federal district court judge, I would be bound by precedents of the Supreme Court regardless of its size or composition.

4. **Do you personally own any firearms? If so, please list them.**

RESPONSE: No.

5. **Have you ever personally owned any firearms?**

RESPONSE: No.

6. **Have you ever used a firearm? If so, when and under what circumstances?**

RESPONSE: I have never used a firearm. The only times I have handled a firearm are when one was evidence in a case while I was a public defender. On those occasions, I was either inspecting the firearm during an investigation or at trial prior to the entry of the firearm into evidence.

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

RESPONSE: The Supreme Court held that the Second Amendment confers "an individual right to keep and bear arms." *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008). The Supreme Court also has held that the Second Amendment right to keep and bear arms is a fundamental right that applies to the states as well the federal government. See

McDonald v. City of Chicago, 561 U.S. 742, 750 (2010). If confirmed as a district court judge, I will be bound to faithfully apply these binding precedents.

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

RESPONSE: I am aware of social science research that discusses the disparate impact that certain laws have on certain demographic groups as well as the 2017 United States Sentencing Commission Report that found continuing disparities in sentencing based upon demographic differences, even after controlling for a wide variety of sentencing factors. However, if I were to be confirmed as a district court judge, my job will be to consider the specific facts of the specific case before me and apply the applicable law.

9. **When you were active in suing the Trump Administration, you said that courts could consider the campaign statements and other statements from the President when assessing the legality of an executive order. Specifically, you said: "We have heard every word the President, his advisors, and administration have said. There are no take backs." Does this standard apply to President Biden? If not, please explain why.**

RESPONSE: I was lead counsel in only one lawsuit against the Trump administration: *Doe v Trump*, Case No. 2:17-cv-00178-JLR (W.D. Wash.). The case alleged that Executive Order 13769 (as well as the subsequent related executive orders and proclamation) violated the Constitution, the Immigration and Nationality Act, and the Administrative Procedure Act. One of the legal issues in that case was the fact that the President had proffered one rationale for the Executive Order — national security — but certain statements of his suggested that the rationale for the Executive Order was animus against people of a specific faith and national origin. Thus, the comments by the President were very much at issue in the case. Statements by President Biden and his advisors may likewise be relevant to assessing the legality of an executive order, though the relevance of any statements would depend on the specific facts of any case, the issues and claims raised by the parties, and the applicable law.

Senator Josh Hawley
Questions for the Record

Tana Lin
Nominee, U.S. District Court for the Western District of Washington

1. **Under Supreme Court and U.S. Court of Appeals for the Ninth Circuit precedent, 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 order for a petitioner to succeed on an Eighth Amendment method-of-execution claim, the petitioner must establish that: (1) the State's lethal injection protocol creates a demonstrated risk of severe pain;" and (2) "the risk is substantial when compared to the known and available alternatives." *Baze v. Rees*, 553 U.S. 35, 61 (2008). *See also Lopez v. Brewer*, 680 F.3d 1068, 1073 (9th Cir. 2012). The Supreme Court reaffirmed these requirements in *Glossip v. Gross*, 576 U.S. 863, 877-78 (2015) and also clarified that a petitioner must "identify a known and available alternative method of execution that entails a lesser risk of pain." *Id.* at 867.

2. **Under the Supreme Court's holding in *Glossip v. Gross*, 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. A petitioner must "identify a known and available alternative method of execution that entails a lesser risk of pain." *Glossip v. Gross*, 576 U.S. 863, 867 (2015).

3. **Has the Supreme Court or the U.S. Court of Appeals for the Ninth Circuit ever recognized a constitutional right to DNA analysis for habeas corpus petitioners in order to prove their innocence of their convicted crime?**

   RESPONSE: No. To the contrary, the Supreme Court warned that the task of how to "harness DNA's power to prove innocence without unnecessarily overthrowing the established system of criminal justice" belongs to the legislature. *Dist. Attorney's Off. for Third Jud. Dist. v. Osborne*, 557 U.S. 52, 62 (2009). The Court further held there was no substantive due process right to DNA evidence through a habeas petition. *Id* at 72.

4. **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.

5.

a. Under Supreme Court and U.S. Court of Appeals for the Ninth Circuit precedent, what is the legal standard used to evaluate a claim that a facially neutral state governmental action is a substantial burden on the free exercise of religion? Please cite any cases you believe would be binding precedent.

RESPONSE: Assuming the governmental action is by a state and is, in fact, neutral, the Supreme Court has held that "a law that burdens religious practice need not be justified by a compelling governmental interest if it is neutral and of general applicability." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 521 (1993). The Supreme Court has recently clarified that a law is not neutral and generally applicable if it "treat[s] *any* comparable secular activity more favorably than religious exercise *Tandon v. Newsom*, 141 S. Ct. 1294, 1296, (2021) (emphasis in original) "If a law is neutral and of general applicability, then the law need only survive rational basis review, even if it "'has the incidental effect of burdening a particular religious practice.'" *S. Bay United Pentecostal Church v. Newsom*, 985 F.3d 1128, 1140 (9th Cir. 2021) (quoting *Church of the Lukumi*, 508 U.S. at 531). However, the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc et seq., prohibits a state or local government from substantially burdening the religious exercise of institutionalized persons unless the government demonstrates that imposition of the burden furthers a compelling governmental interest and is the least restrictive means available to further that interest. *See, e.g., Cutter v. Wilkinson*, 544 U.S. 709, 712, (2005); *Fuqua v. Ryan*, 890 F.3d 838, 848 (9th Cir. 2018).

b. Under Supreme Court and U.S. Court of Appeals for the Ninth Circuit precedent, 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: State governmental action that is not neutral or of general applicability and discriminates against a religious group or religious belief is subject to strict scrutiny. *See e.g., Fulton v. City of Philadelphia*, No. 19-123, 2021 WL 2459253 (U.S. June 17, 2021); *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993); *S. Bay United Pentecostal Church v. Newsom*, 985 F.3d 1128, 1140 (9th Cir. 2021). A government policy can survive strict scrutiny only if it advances "interests of the highest order" and is narrowly tailored to achieve those interests. *Fulton*, 2021 WL 2459253, at *8 (citing *Church of the Lukumi*, 508 U.S. at 546).

c. What is the standard in the U.S. Court of Appeals for the Ninth Circuit for evaluating whether a person's religious belief is held sincerely?

RESPONSE: The Ninth Circuit is bound by Supreme Court precedent, and the Supreme Court has noted that courts should neither act as "arbiters of scriptural interpretation," *Thomas v. Rev. Bd. of Indiana Emp. Sec. Div*., 450 U.S. 707, 716

(1981), nor "undertake to dissect religious beliefs." *Id*. at 715. *See also Burwell v. Hobby Lobby Stores, Inc*., 573 U.S. 682, 724 (2014) (courts must not decide the plausibility of a religious claim); *Oklevueha Native Am. Church Of Hawaii, Inc. v. Lynch*, 828 F.3d 1012, 1016 (9th Cir. 2016) (same). Determining what is a religious belief or practice is "more often than not a difficult and delicate task, ... the resolution of [which] is not to turn upon a judicial perception of the particular belief or practice in question." *Thomas*, 450 U.S. at 714. *See also Shilling v. Crawford*, 377 F. App'x 702, 704 (9th Cir. 2010). Accordingly, the "narrow function of a reviewing court" is to determine whether a party's asserted religious beliefs are "an honest conviction." *Thomas*, 450 U.S. at 715.

6. **What is your understanding of the Supreme Court's holding in *District of Columbia v. Heller?***

   RESPONSE: The Supreme Court held in *District of Columbia v. Heller* that the Second Amendment confers "an individual right to keep and bear arms." 554 U.S. 570, 595 (2008). This right is not limited to the carrying of arms in a militia. *Id.* at 586. Nor is the right an unlimited right. *Id.* at 595 and 626-27. Further, the Court also held that the Second Amendment protects the possession of an operable handgun in one's home for the purpose of immediate self-defense." *Id.* at 635.

7. **Please state whether you agree or disagree with the following statement and explain why: "Absent binding precedent, judges should interpret statutes based on the meaning of the statutory text, which is that which an ordinary speaker of English would have understood the words to mean, in their context, at the time they were enacted."**

   RESPONSE: In the absence of any controlling precedent, if confirmed to be a judge, I would first look to the text of the statute. If the terms were clear and unambiguous, my inquiry would end, and I would apply the terms of the statute to the facts of the case. If the terms were ambiguous, I would follow the rules of statutory construction, including reviewing the broader statutory context and how terms were used. I would also review Supreme Court and Ninth Circuit precedent interpreting related or analogous statutory provisions. If necessary, I would consider the legislative history of the statute and also consult other federal or state court decisions as persuasive, but not binding, authority.

8. **What criteria would you take into account in determining whether to grant a nationwide injunction?**

   RESPONSE: A plaintiff seeking a preliminary injunction must establish that (1) he is likely to succeed on the merits, (2) he is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in his favor, and (4) an injunction is in the public interest. *See, e.g., Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 668 (9th Cir. 2021). When the government is a party, the equities and public interest factors merge. *Id*. (citing *Nken v.*

Holder, 556 U.S. 418, 435 (2009). With regard to the scope of an injunction, the relief provided should be "no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs before the court…Where relief can be structured on an individual basis, it must be narrowly tailored to remedy the specific harm shown, but there is no general requirement that an injunction affect only the parties in the suit." *E. Bay Sanctuary Covenant*, 993 F.3d at 680. (internal quotations marks and citations omitted). If confirmed as a district court judge, I will (1) evaluate the facts of the particular case (2) consider the claims, issues, and arguments presented by the parties and (3) apply these precedents as well as any other relevant Supreme Court or Ninth Circuit rulings with regard to nationwide injunctions.

Questions for the Record for Tana Lin
From Senator Mazie K. Hirono

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

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

      RESPONSE**:** No.

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

      RESPONSE: No.

Senator Mike Lee
Questions for the Record
Tana Lin, W.D. Washington

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

RESPONSE: I would approach each case first and foremost with an open mind and also with humility as well as a recognition that the role of a judge is a limited one. If I were to be confirmed, my process as a district court judge would be to carefully look at the facts of the specific case before me, impartially apply the applicable law, and limit my findings to those issues raised by the parties.

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

RESPONSE: If confirmed to be a judge and the Supreme Court or Ninth Circuit had previously interpreted the statute in question, then I would be bound to follow that precedent. In the absence of any controlling precedent, I would first look to the text of the statute. If the terms were clear and unambiguous, my inquiry would end, and I would apply the terms of the statute to the facts of the case. If the terms were ambiguous, I would follow the rules of statutory construction, including reviewing the broader statutory context and how terms were used. I would also review Supreme Court and Ninth Circuit precedent interpreting related or analogous statutory provisions. If necessary, I would consider the legislative history of the statute and also consult other federal or state court decisions as persuasive, but not binding, authority.

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

RESPONSE: If confirmed to be a judge and the Supreme Court or Ninth Circuit had previously interpreted the constitutional provision in question, then I would be bound to follow that precedent. In the event that I am presented with a constitutional issue of first impression, I would look at the text of the constitutional provision, examine Supreme Court and Ninth Circuit cases to determine the method of interpretation utilized for the particular provision, and do my best to interpret the provision in a manner consistent with the Supreme Court and Ninth Circuit methodology. If necessary, I would consider other federal or state court decisions as persuasive, but not binding, authority.

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

RESPONSE: If confirmed as a district court judge, I will be bound to faithfully apply all binding precedents of the Supreme Court and the Ninth Circuit. This includes a duty to apply all precedents that pertain to methods of constitutional interpretation.

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

RESPONSE: The Supreme Court has held that to meet the Article III constitutional requirements for standing, plaintiffs must demonstrate that (1) they have suffered an "injury in fact" that is "concrete and particularized" and "actual or imminent, not 'conjectural' or 'hypothetical;'" (2) the injury is fairly traceable to the defendant's conduct; and (3) it is " 'likely,' as opposed to merely 'speculative,' that a favorable decision will redress the injury." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992).

6. **Do you believe there is a difference between "prudential" jurisdiction and Article III jurisdiction in the federal courts? If so, which jurisdictional requirements are prudential, and which are mandatory?**

RESPONSE: Article III standing, as described in response to Question 5, makes up the "irreducible constitutional minimum of standing." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992).

"Prudential jurisdiction" or "prudential standing" is a non-constitutional doctrine that encompasses at least three broad principles: "'the general prohibition on a litigant's raising another person's legal rights, the rule barring adjudication of generalized grievances more appropriately addressed in the representative branches, and the requirement that a plaintiff's complaint fall within the zone of interests protected by the law invoked.'" *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 126, (2014). This has also been referred to as "statutory standing," a term the Supreme Court preferred because it places the focus on the statute. *Id.* at 128 n.4. However, the Supreme Court warned that the term "statutory standing" is still "misleading" because "the absence of a valid (as opposed to arguable) cause of action does not implicate subject-matter jurisdiction*, i.e.*, the court's statutory or constitutional power to adjudicate the case." *Id.* (internal quotation and citation omitted).

7. **How would you define the doctrine of administrative exhaustion?**

RESPONSE: The doctrine of administrative exhaustion means that an individual challenging an agency decision must first pursue available remedies through the agency's process before seeking judicial review. *See e.g. Myers v. Bethlehem Shipbuilding Corp*. 303 U.S. 41 (1938).

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

RESPONSE: Yes. As noted by the Supreme Court, "the constitution, after enumerating certain specific powers, expressly gives to congress the power 'to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.' *McCulloch v. State*, 17 U.S. 316, 353 (1819). An example of an implied power of Congress is the power to establish a national bank. *Id.*

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

RESPONSE: I would look to Supreme Court and Ninth Circuit precedent. If there was no case on point, then I would look to the methodology employed by the Supreme Court and the Ninth Circuit in similar cases and apply those principles to guide my decision. For example, if the issue involved the Commerce Clause, I would start by looking to *United States v. Lopez*, 514 U.S. 549 (1995), and *United States v. Morrison*, 529 U.S. 598 (2000), in which the Supreme Court looked to the text of the Constitution as well as prior precedent regarding the Commerce Clause.

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

RESPONSE: Yes. The Supreme Court has held that the Constitution protects certain rights that are not expressly enumerated in the Constitution. A few examples of these rights are the right to privacy, *see Griswold v. Connecticut*, 381 U.S. 479 (1965); the right to marry, *see Loving v. Virginia*, 388 U.S. 1 (1967); the right to direct the education of one's children, *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); and the right to travel. *See Saenz v. Roe*, 526 U.S. 489 (1999).

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

RESPONSE: The Supreme Court has held that a right is fundamental for purposes of the substantive due process clause—even when not explicitly expressed in the text of the Constitution—when it is "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 (1997). Examples of such rights are listed in response to Question 10.

12. **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: If confirmed as a district court judge, I will follow the same process for considering cases, regardless of the subject matter. I will (1) evaluate the facts of the particular case (2) consider the claims, issues, and arguments presented by the parties and (3) carefully research, analyze, and apply the applicable law. Further, I will faithfully apply all binding Supreme Court and Ninth Circuit precedents. Therefore, my personal opinions regarding the issue of substantive due process will be of no moment.

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

RESPONSE: The Supreme Court has identified three broad categories of activity 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" and activities that threaten such instrumentalities, persons or things, and (3) activities that "substantially affect interstate commerce[.]" *United States v. Lopez*, 514 U.S. 549, 558–59 (1995).

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

RESPONSE: The Supreme Court has held that suspect classifications are those that are "so seldom relevant to the achievement of any legitimate state interest that laws grounded in such considerations are deemed to reflect prejudice and antipathy" and should be subjected to strict scrutiny under the Equal Protection Clause. *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440 (1995). Examples of suspect classifications are those based upon race, alienage, national origin, gender, and religion. *Id*.; *City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976).

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

RESPONSE: The separation of powers created by our Constitution is a bedrock of our democracy. In order to ensure that power is not concentrated into any single branch of government and to promote liberty by having the three branches act independently of one another, the Constitution divided power between the various branches of government: the legislative branch is responsible for enacting laws, the executive branch is responsible for implementing and administering the public policy enacted by the legislative branch, and the judicial branch is responsible for interpreting and applying the law.

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

RESPONSE: I would use the same procedure enumerated in response to Question 9.

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

RESPONSE: As required by the judicial oath of office, the role of a district court judge is to adjudicate each case impartially and objectively in accordance with all applicable precedent.

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

RESPONSE: Judges should neither invalidate laws that are constitutional nor uphold laws that are unconstitutional.

19. **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: This issue did not arise during my thirty years of practice, so I have not had the occasion to reflect on it since I was a law student. If confirmed as a district court judge, I will be bound to faithfully apply all binding precedents of the Supreme Court.

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

RESPONSE: I am not familiar with the term "judicial supremacy." Based upon my research, it appears that the term "judicial review" in the context of "judicial supremacy" discussions refers to the principle that the authority to interpret the Constitution resides in each branch of government. Judicial supremacy appears to refer to the principle that the Supreme Court's interpretation of the Constitution is authoritative over the other two branches of government.

21. **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: Elected officials take an oath to uphold the Constitution, and their independent judgment as to what the Constitution requires should inform their decisions in passing, enforcing, or executing the laws. However, elected officials should abide controlling interpretations of laws by the Supreme Court.

22. **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: The features that Hamilton cited as rendering the courts "least dangerous" are part of what makes judicial independence possible. The function of the courts is limited to entering impartial judgment regarding the rights and responsibilities of the parties in those cases and not reaching beyond to solve broader social problems.

23. **How would you describe your approach to reading statutes—how much weight do you give to the plain meaning of the text? When we talk about the plain meaning of a statute, are we talking about the public understanding at the time of enactment, or does the meaning change as social norms and linguistic conventions evolve?**

RESPONSE: If confirmed to be a judge and the Supreme Court or Ninth Circuit statute had previously interpreted the statute in question, then I would be bound to follow that precedent. In the absence of any controlling precedent, I would first look to the text of the statute. If the terms were clear and unambiguous, my inquiry would end, and I would apply the terms of the statute to the facts of the case. If the terms were ambiguous, I would follow the rules of statutory construction, including reviewing the broader statutory context and how terms were used. I would also review Supreme Court and Ninth Circuit precedent interpreting related or analogous statutory provisions. If necessary, I would consider the legislative history of the statute and also consult other federal or state court decisions as persuasive, but not binding, authority.

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

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

RESPONSE: A district court judge is bound to apply controlling precedent of the Supreme Court and the circuit in which the judge sits regardless of whether the judge agrees with the decision or rationale provided. Whether a precedent should be extended is a case-specific determination, dependent upon the facts of the particular case, the specific issues raised by the parties, and how analogous or "on all fours" the case is with the precedent.

25. **Do you believe it is ever appropriate to look past jurisdictional issues if they prevent the court from correcting a serious injustice?**

RESPONSE: No. Federal courts are courts of limited jurisdiction. If the jurisdictional requirements are not met, then a court has no authority over the case.

26. **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: Section 5H1.10 of the Sentencing Guidelines Manual states that race, sex, national origin, creed, religion, and socio-economic status "are not relevant in the determination of a sentence." The factors to be considered when sentencing an individual are set forth in Section 3553(a) of Title 18 of the United States Code. If confirmed as a district judge, I would consider all of the factors identified in the statute, consult the Sentencing Guidelines Manual, and consider the submissions of the parties.

27. **In May 2020, you signed a statement by a group called DOJ Alumni condemning the Department of Justice's decision to dismiss charges against General Michael Flynn and urging District Court Judge Sullivan to "closely examine the Department's stated rationale for dismissing the charges . . . and to deny the motion and proceed with sentencing if appropriate."**

a **Do you believe it is the proper role of an Article III judge to determine whether a criminal prosecution should proceed after the Department of Justice has asked a court to dismiss the case?**

RESPONSE: Judges take an oath to be impartial, and Judicial Canon 1 of the Code of Conduct for United States Judges requires them to uphold the independence and integrity of the judiciary. Article III judges must impartially and independently evaluate the facts of each specific case before them in light of the issues and claims raised by the parties and apply the applicable law.

28. **In her dissent in In re: Michael T. Flynn, Judge Neomi Rao stated "by allowing the district court to scrutinize 'the reasoning and motives' of the Department of Justice, the majority ducks our obligation to correct judicial usurpations of executive power and leaves Flynn to twist in the wind while the district court pursues a prosecution without a prosecutor." Would you agree that Judge Sullivan's attempts to keep the prosecution of General Flynn alive even though the Justice Department had dismissed charges constitutes a "judicial usurpation of executive power?"**

RESPONSE: As a pending judicial nominee, it would be inappropriate for me to comment on my personal opinion regarding the actions and/or opinions of other judges. Judges take an oath to be impartial, and Judicial Canon 1 of the Code of Conduct for United States Judges requires them to uphold the independence and integrity of the judiciary. Article III judges must impartially and independently evaluate the facts of each specific case before them in light of the issues and claims raised by the parties and apply the applicable law.

29. **At a Seattle Journal for Social Justice Annual Banquet on April 21, 2017, you stated "[i]n the last three short months of this administration, I feel like we've already gone back at least a few decades as far as progress on social justice issues. We have a lot of work to do." Could you explain what you meant by this statement?**

RESPONSE: I am a person of color who has faced prejudice, including physical and verbal bullying based solely upon my immutable physical characteristics. I feared that certain rhetoric of the previous administration categorically demonized certain ethnic groups in ways that could cause fear and potentially contribute to violence against those groups, as demonstrated by the rise in violence against Muslims at the time I gave the speech.

30. **Do you believe that it would be proper for an Article III judge to use her position to advance social justice issues?**

RESPONSE: The job of an Article III judge is to do justice in each individual case that comes before her by resolving each case based solely on the facts of the specific case, the issues and claims raised by the parties, and the applicable law. However, judges should keep in mind that they also function as role models and also have a duty to ensure that each person that comes through the courthouse doors is treated with dignity, heard, and has equal access to the services provided by the court.

31. **Can you point to any evidence from your legal career that will assure future litigants that you can set-aside your personal views and act as an impartial jurist?**

RESPONSE: In my nearly 30 years of practice, I have served as an advocate in many different contexts – *e.g.*, for individuals, the federal government, and various organizations. If confirmed as a district court judge, I will first and foremost remember that I will be in a completely different role: one that requires me to be impartial. I hope that my reputation as an advocate with both colleagues and opposing counsel is as a lawyer who has the highest ethics and integrity, advocates for her clients well within the bounds of the law, and is able to see the other side's perspective. Finally, I was grateful that the Standing Committee on the Federal Judiciary of the American Bar Association—which evaluates nominees for integrity, professional competence and judicial temperament—unanimously rated me "Well Qualified."

Senator Ben Sasse
Questions for the Record
U.S. Senate Committee on the Judiciary
Hearing: "Nominations"
June 9, 2021

For all nominees:

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. **Since becoming a legal adult, have you participated in any rallies, demonstrations, or other events at which you or other participants have willfully damaged public or private property?**

   RESPONSE: No.

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

   RESPONSE**:** I would approach each case first and foremost with an open mind and also with humility as well as a recognition that the role of a judge is a limited one. If I were to be confirmed, my process as a district court judge would be to carefully look at the facts of the specific case before me, impartially apply the applicable law, and limit my findings to those issues raised by the parties.

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

   RESPONSE: I do not ascribe to a particular label because if confirmed as a district court judge, I would be bound to faithfully apply all binding precedents of the Supreme Court and Ninth Circuit regardless of whether those precedents are fairly described as "originalist" or not.

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

   RESPONSE: Please see my response to Question 4.

6. **Do you believe the Constitution is a "living" document? Why or why not?**

   RESPONSE: I believe the Constitution was drafted to be an enduring document that expressed core principles that would act as a consistent guide over time. If confirmed as a district court judge, I will be bound to faithfully apply all binding precedents of the Supreme Court and the Ninth Circuit. This includes a duty to apply all precedents that pertain to methods of constitutional interpretation.

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

   RESPONSE: I have not studied the judicial philosophies or specific jurisprudence of Supreme Court Justices appointed since 1953 and am, therefore, without sufficient knowledge to be able to state which one(s) I admire "the most.".

8. **Was Marbury v. Madison correctly decided?**
9. **Was Lochner v. New York correctly decided?**
10. **Was Brown v. Board of Education correctly decided?**
11. **Was Bolling v. Sharpe correctly decided?**
12. **Was Cooper v. Aaron correctly decided?**
13. **Was Mapp v. Ohio correctly decided?**
14. **Was Gideon v. Wainwright correctly decided?**
15. **Was Griswold v. Connecticut correctly decided?**
16. **Was South Carolina v. Katzenbach correctly decided?**
17. **Was Miranda v. Arizona correctly decided?**
18. **Was Loving v. Virginia correctly decided?**
19. **Was Katz v. United States correctly decided**
20. **Was Roe v. Wade correctly decided?**
21. **Was Romer v. Evans correctly decided?**
22. **Was United States v. Virginia correctly decided?**
23. **Was Bush v. Gore correctly decided?**
24. **Was District of Columbia v. Heller correctly decided?**
25. **Was Crawford v. Marion County Election Bord correctly decided?**
26. **Was Boumediene v. Bush correctly decided?**
27. **Was Citizens United v. Federal Election Commission correctly decided?**
28. **Was Shelby County v. Holder correctly decided?**
29. **Was United States v. Windsor correctly decided?**
30. **Was Obergefell v. Hodges correctly decided?**

    RESPONSE TO QUESTIONS 8-30**:** It is generally not appropriate for a judicial nominee to comment on the results or reasoning in Supreme Court decisions. All Supreme Court precedent will be binding upon me if I am confirmed as a district court judge. I am, however, aware that prior judicial nominees have made exceptions to the practice of declining comment on the merits of Supreme Court decisions to acknowledge that the principles underlying the following three cases are so foundational that they are beyond dispute and unlikely to be revisited by the Supreme Court: *Marbury v. Madison*, *Brown v. Board of Education*, and *Loving v. Virginia*. With this caveat, I believe that I can state that I believe these three cases were correctly decided without violating my duties under the Judicial Canons. I reiterate with respect to all other cases mentioned, to the extent a case is binding Supreme Court precedent, I would follow it regardless.

31. **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: The determination of when it is appropriate for an appellate court to reaffirm its own precedent is not something upon which I would rule as a district court judge if I were to be confirmed. If confirmed as a district court judge, I will be bound to faithfully apply all binding precedents of the Supreme Court and Ninth Circuit.

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

RESPONSE: Please see my response to Question 31.

33. 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**:** No. A judge is to resolve the particular case or controversy in front of her. With regard to sentencing, the factors to be considered are set forth in 18 U.S.C. §3553(a). One of these factors is, "[t]he need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." 18 U.S.C. §3553(a)(6). Further, section 5H1.10 of the Sentencing Guidelines Manual statesthat race, sex, national origin, creed, religion, and socio-economic status "are not relevant in the determination of a sentence." If confirmed as a district judge, I would consider all of the factors identified in the statute, consult the Sentencing Guidelines Manual, and consider the submissions of the parties.

Questions for the Record for
Senator Thom Tillis for
Questions for Ms. Tana Lin

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

   RESPONSE: Yes. The Code of Conduct for United States Judges requires judges to be independent, impartial, and to uphold the integrity of the judiciary. Accordingly, a judge's own personal views regarding a matter must not have any bearing on her interpretation and application of the law.

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

   RESPONSE: Judicial activism occurs in two situations: (1) when a judge resolves cases consistent with his or her personal views or (2) when a judge reaches beyond the issues raised by the parties in issuing his or her decision. Pursuant to 28 U.S.C. § 453, judges take an oath to be impartial, and Judicial Canon 1 of the Code of Conduct for United States Judges require them to uphold the independence and integrity of the judiciary. Therefore, judges must resolve only the cases and controversies before them and must do so in a manner that is consistent with the law, regardless of the judge's own personal views of the matter. As I have defined judicial activism, it is not appropriate.

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

   RESPONSE: Pursuant to 28 U.S.C. § 453, judges take an oath to be impartial, and the Code of Conduct for United States Judges requires judges to be independent, impartial, and to uphold the integrity of the judiciary.

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

   RESPONSE: No. A judge should be guided by the applicable law as applied to the facts of the specific case before her and the issues raised by the parties.

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

   RESPONSE: Faithfully interpreting the law can sometimes result in an outcome that may be contrary to a judge's own personal view of the matter. However, the impartial, equitable, and consistent application of the law to everyone is critical for maintaining public confidence in the judicial system. Further, a judge takes an oath to be impartial and uphold the integrity of the judiciary, which includes setting aside any personal opinions and faithfully applying the law. Ultimately, if I am confirmed as a district court judge, I hope that I will have clearly explained the basis for each ruling I will make and everyone who appears before me will feel respected, listened to, and genuinely heard.

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

RESPONSE: No. The Code of Conduct for United States Judges requires judges to be independent, impartial, and to uphold the integrity of the judiciary. Accordingly, a judge's own politics or policy preferences should play no role in her interpretation and application of the law.

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

RESPONSE: If confirmed as a district court judge, I will be bound to faithfully apply all binding precedents of the Supreme Court and the Ninth Circuit. This includes a duty to apply all precedents that pertain to the Second Amendment individual right to keep and bear arms.

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

RESPONSE: If confirmed as a district court judge, I will follow the same process for considering cases, regardless of the subject matter. I will (1) evaluate the facts of the particular case (2) consider the claims, issues, and arguments presented by the parties and (3) carefully research, analyze, and apply the applicable law. With regard to the pandemic-related question, I would start by looking to *Tandon v. Newsom*, 141 S. Ct. 1294 (2021), and *Roman Cath. Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 68 (2020), for guidance.

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

RESPONSE: If confirmed as a district court judge, I will follow the same process for considering cases, regardless of the subject matter. I will (1) evaluate the facts of the particular case (2) consider the claims, issues, and arguments presented by the parties and (3) carefully research, analyze, and apply the applicable law. Under binding Supreme Court and Ninth Circuit precedents, law enforcement officers are entitled to qualified immunity unless (1) they violated a federal constitutional right, and (2) the unlawfulness of their conduct was clearly established at the time." *District of Columbia v. Wesby*, 138 S. Ct. 577, 589 (2018). *See also e.g., Tobias v. Arteaga*, 996 F.3d 571, 579 (9th Cir. 2021).

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: Whether sufficient protections is provided for law enforcement officers with respect to the issue of qualified immunity is a policy question within the purview of the legislative branch, not the judicial branch. Further, as a pending judicial nominee, it would be inappropriate for me to comment on my personal beliefs regarding the current state of qualified immunity jurisprudence. If confirmed as a district court judge, I will be bound to faithfully apply all binding precedents of the Supreme Court and the Ninth Circuit, including any precedent pertaining to qualified immunity.

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

RESPONSE: The proper scope of qualified immunity is a policy question within the purview of the legislative branch, not the judicial branch.

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

RESPONSE: As a pending judicial nominee, it would be inappropriate for me to comment on my personal opinion regarding Supreme Court jurisprudence. I am aware that Senator Tillis has been working on the issue of reforming 35 U.S.C. § 101 regarding patent eligibility. However, I have not litigated any patent cases in my nearly thirty years of practice. If confirmed as a district court judge, I will follow the same process for considering cases, regardless of the subject matter and including cases involving immigration. I will (1) evaluate the facts of the particular case (2) consider the claims, issues, and arguments presented by the parties and (3) carefully research, analyze, and apply the applicable law. I also will be bound to faithfully apply all binding precedents of the Supreme Court.

13. Do you believe the current jurisprudence provides the clarity and consistency needed to incentivize innovation? How would you apply the Supreme Court's ineligibility tests—laws of nature, natural phenomena, and abstract ideas—to cases before you?

RESPONSE: Please see my response to Question 12. If confirmed as a district court judge and were this issue to arise, I would start by looking to Supreme Court precedents such as *Alice Corp. Pty. v. CLS Bank Int'l,* 573 U.S. 208, 217 (2014), and *Mayo Collaborative Servs. v. Prometheus Lab'ys, Inc*., 566 U.S. 66, 79, 132 S. Ct. 1289, 1298, 182 L. Ed. 2d 321 (2012). The Supreme Court set out a two-step framework in *Mayo* for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts: (1) determine whether the claims at issue are directed to one of those patent-ineligible concepts; and (2) if so, then ask, "'[w]hat else is there in the claims before us?'" *Alice Corp. Pty*, 573 U.S. at 271 (quoting *Mayo Collaborative Servs.*, 566 U.S. at 78). To answer the question posed in step two, the Supreme Court "consider[ed] the elements of each claim both individually and 'as an

ordered combination' to determine whether the additional elements 'transform the nature of the claim' into a patent-eligible application." *Alice Corp. Pty*, 573 U.S. at 271 (quoting *Mayo Collaborative Servs*., 566 U.S. at 78).