Senator Josh Hawley
Questions for the Record

Franklin Ulyses Valderrama
Nominee, U.S. District Court for the Northern District of Illinois

1.

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

The free exercise clause of the First Amendment provides that "Congress shall make no law … prohibiting the free exercise" of religion. The Supreme Court has held that the scope of the Free Exercise Clause is broad and that its protections are triggered "if the law at issue discriminates against some or all religious beliefs or regulates or prohibits conduct because it is undertaken for religious reasons." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah***,** 508 U.S. 520, 532 (1993)**.** If confirmed, I will fully and faithfully apply all Supreme Court and Seventh Circuit precedent, including in the area of the First Amendment's free exercise of religion clause.

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

The Supreme Court has interpreted the right to free exercise of religion broadly and to encompass more than just the freedom to worship. See, e.g. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah***,** 508 U.S. 520, 532 (1993). If confirmed, I will fully and faithfully apply all Supreme Court and Seventh Circuit precedent.

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

In *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah***,** 508 U.S. 520, (1993), the Supreme Court held that a law burdening religious practice that is not neutral or not just of general application is subject to strict scrutiny, which means that it must be narrowly tailored to advance a compelling government interest. *Id*. at 531-32. If confirmed, I will fully and faithfully apply all Supreme Court and Seventh Circuit precedent.

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

The Supreme Court has stated that it is generally inappropriate for a federal court to question the sincerity of a religiously held belief. See *Burwell v. Hobby Lobby Stores, Inc*., 573 U.S. 683, 725 (2014). Instead, the court's "narrow function is to determine whether the party's asserted religious belief reflects "an honest conviction." *Thomas v. Review Bd. Of Indiana Employment Sec. Division*, 450 U.S. 707, 715 (1981).

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

Congress enacted the Religious Freedom Restoration Act of 1993 (RFRA), to provide broad protection for religious liberty. *Burwell v. Hobby Lobby Stores, Inc*., 573 U.S. 683, 694 (2014). The RFRA requires the government to exempt a party from laws or regulations that "substantially burden a person's exercise of religion "unless application of the burden…is in furtherance of a compelling governmental interest" and "is the least restrictive means of furthering that interest." 42 U.S.C §2000bb *et seq.* The RFRA applies "to all Federal law, and the implementation of that law, whether statutory or otherwise," including laws enacted after RFRA's enactment date, "unless such law explicitly excludes such application.*"* 42 U.S.C §2000bb-3. If confirmed I will fully and faithfully apply all Supreme Court and Seventh Circuit precedent.

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

No.

2.

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

In *District of Columbia v. Heller*, 554 U.S. 570 (2008) the Court held that the Second Amendment establishes an individual's right to possess a firearm, without connection to service in a militia, for traditionally lawful purposes, such as self-defense within the home. In so doing, the Court struck down a District of Columbia law that banned the possession of handguns in the home.

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

As a state court judge, I have not issued an opinion adjudicating a claim under the Second Amendment. However, I issued an opinion in a lawsuit brought by a community organization against several municipalities in Illinois alleging that the municipalities' failure to adequately license and regulate firearms dealers violated the Illinois Civil Rights Act. *Coalition for Safe Chicago Communities, et al v. Village of Riverdale, et al*, 2016 WL 1077293 (Ill.Cir.Ct.).

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

The issue of nationwide injunctions has been the topic of considerable commentary. *See* generally Samuel L. Bray, Multiple Chancellors: Reforming the National Injunction, 131 HARV.L.REV. 417 (2017), and Amanda Frost, Article: In Defense of Nationwide Injunctions, 93 N.Y.U. L. REV. 1065 (2018). Whether it is appropriate to issue a nationwide injunction, and if so, under what circumstances are current subjects of litigation, on which the Supreme Court has not issued a decision. The Seventh Circuit has recognized that while nationwide injunctions should be utilized in only rare circumstances, there are some circumstances in which they would be appropriate. See *City of Chicago v. Sessions*, 888 F.3d. 272, 288 (7th Cir. 2018). As a judicial nominee, it would be inappropriate for me to comment in a manner that would indicate a predetermined decision on a disputed matter. *See* Canon 3 (A)(6) Code of Conduct of United States Judges. If confirmed, I would fully and faithfully follow all Supreme Court and Seventh Circuit precedent on this area.

4. **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."**

I agree that a judge, when interpreting a statute should begin by looking to the ordinary meaning of the statutory text. *Food Marketing Institute v. Argus Leader Media*, 139 S.Ct. 2356, 2364 (2019). If confirmed, I will fully and faithfully apply Supreme Court and Seventh Circuit precedent regarding statutory interpretation.

5. **Dissenting in *Lochner v. New York*, Justice Oliver Wendell Holmes Jr. wrote that "[t]he Fourteenth Amendment does not enact Mr. Herbert Spencer's Social Statics."**

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

While I am familiar with the quote, I have not studied Herbert Spencer's book, Social Statistics and am not able to comment on what Justice Holmes meant. However, I believe that Justice Holmes, in his dissent, was arguing that the Court should not impose its own views about economic theory on legislatures. *Lochner v. New York*, 198 U.S. 45, 75 (1905). I agree that a judge must apply the Constitution as written and not insert his or her own personal beliefs or policy preferences into the decision-making process. If confirmed, I will fully and faithfully apply Supreme Court and Seventh Circuit precedent and decide each case based on the law, regardless of my personal views.

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

In *Lochner*, the Court struck down a New York law which limited the hours which a baker could work. The Court found the law to constitute an abridgement of liberty of contract and therefore, a violation of due process. The specific holding in *Lochner* itself was effectively overruled in *Bunting v. Oregon*, 243 U.S. 426 (1917) (upholding maximum hour legislation for mill workers to protect their safety). It is generally not appropriate for a lower court nominee to comment on whether a particular Supreme Court decision was correctly decided (or overturned). *See* Canons 2(A) and 3(A), of the Code of Conduct for United States Judges.

6. In *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), the Supreme Court set out the precedent of judicial deference that federal courts must afford to administrative actions.

a. Please explain your understanding of the Supreme Court's holding in *Chevron.*

In *Chevron*, the Court set forth set forth a two-step framework for reviewing an agency's interpretation of a statute that it is charged with administering. In step one, the court, applying the ordinary tools of statutory construction must determine "whether Congress has directly spoken to the precise question at issue." *Id*. at 842. If Congress has spoken to the precise question, that ends the matter because the court, as well as the agency must give effect to the "unambiguously expressed intent of Congress. *Id.* at 842-43. If, however, the "statute is silent or ambiguous with respect to the specific issue," the court must then move onto step two and determine whether the agency's interpretation is reasonable. *Id*. at 843. Under *Chevron*, statutory ambiguities will be resolved, within the bounds of reasonable interpretation, not by courts, but by the administering agency. *City of Arlington v. FCC*, 569 U.S. 290, 296 (2013).

b. Please describe how you would determine whether a statute enacted by Congress is ambiguous.

Assuming no controlling Supreme Court or Seventh Circuit precedent on point, I would begin by examining the statute's text. If the words of the provision are plain and unambiguous, my analysis ends. If, however, the statute's language is not plain on its face, I would consider the structure of the statute as well as similar statutory language, and employ applicable canons of statutory construction. If, after using all the tools of statutory construction, it is not possible to determine the meaning of the statute, then the statute is ambiguous.

c. In your view, is it relevant to the *Chevron* analysis whether the agency that took the regulatory action in question recognized that the statute is ambiguous?

An agency's view that a statute is ambiguous may be relevant, though it is not necessarily determinative. Although a court may consider the agency's reasoning at step two of the *Chevron* analysis, it is the court's constitutional duty to say what the law is. If confirmed, I would fully and faithfully apply Supreme Court and Seventh Circuit precedent.