Senator Lindsey Graham, Ranking Member
Questions for the Record
Ms. Sparkle Leah Sooknanan
Nominee to be United States District Judge for the District of Columbia.

1. **Are you a citizen of the United States?**

   Response: Yes.

2. **Are you currently, or have you ever been, a citizen of another country?**

   Response: Yes.

   a. **If yes, list all countries of citizenship and dates of citizenship.**

      Response: United States of America (2009 to present), Trinidad and Tobago (1983 to present).

   b. **If you are currently a citizen of a country besides the United States, do you have any plans to renounce your citizenship?**

      Response: When I became a United States citizen, I took the following oath:

      > I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will bear arms on behalf of the United States when required by the law; that I will perform noncombatant service in the Armed Forces of the United States when required by the law; that I will perform work of national importance under civilian direction when required by the law; and that I take this obligation freely, without any mental reservation or purpose of evasion; so help me God.

      In addition, in connection with my prior and current federal employment, I pledged to take any steps to renounce my Trinidad and Tobago citizenship as needed to fulfill my duties, including if such steps were required by law. If confirmed as a federal district court judge, I would do the same.

      i. **If not, please explain why.**

         Response: Please see my response to Question 2(b).

3. **Is it appropriate for a federal judge to consider an immutable characteristic of an attorney (such as race or sex) when deciding whether to grant oral argument? If yes, please describe in which circumstances such consideration would be appropriate.**

   Response: No.

4. **Is it appropriate for a federal judge to consider an immutable characteristic of an attorney (such as race or sex) when deciding whether to grant additional oral argument time? If yes, please describe in which circumstances such consideration would be appropriate.**

   Response: No.

5. **Is it ever appropriate to consider foreign law in constitutional interpretation? If yes, please describe in which circumstances such consideration would be appropriate.**

   Response: The United States Constitution is a domestic document and should be interpreted according to domestic law and authorities. If confirmed, I would look to Supreme Court and D.C. Circuit precedent in interpreting the Constitution.

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

   Response: I strongly disagree with the view that judges should make decisions based on their personal values or personal views. Our Constitution creates judges to decide cases based on the rule of law. If confirmed, I would approach each case by setting aside any personal views or preconceptions I might have about how the case should be resolved and make a decision based on binding precedent and the record before me.

7. **In a concurrence in the denial of rehearing en banc in *Al–Bihani v. Obama* then-Judge Kavanaugh wrote: "international-law norms are not domestic U.S. law in the absence of action by the political branches to codify those norms." Is this a correct statement of law?**

   Response: If confirmed, I would faithfully apply all Supreme Court and D.C. Circuit precedent concerning the relationship between international-law norms and domestic U.S. law. For example, the Supreme Court has recognized that "not all international law obligations automatically constitute binding federal law enforceable in United States courts." *Medellin v. Texas*, 552 U.S. 491, 504 (2008).

8. **You have been Principal Deputy Assistant Attorney General at the Department of Justice's Civil Rights Division since 2023. In your SJQ you state that your duties**

include managing the Civil Rights division's litigation docket, including the Immigrant and Employee Rights Section. On November 9, 2023 the Justice Department released a press release stating "Justice Department Secures $25 Million Landmark Agreement with Apple to Resolve Employment Discrimination Allegations Based on Citizenship Status."

a. **When did you first learn of Department's involvement with the above mentioned matter involving Apple Inc. "Apple"?**

b. **Did you have any role in approving, reviewing, or assisting with any DOJ decision in this matter?**

    i. **If yes, please explain your role.**

c. **Have you reviewed, approved, edited, or written any document related to this matter? If yes, please identify which documents.**

d. **Have you offered any advice to the DOJ's regarding this matter?**

e. **Have you sent, received, or been copied on any email, digital message, or other communications involving this matter? If yes, please explain the nature of these communications.**

f. **Have you otherwise played any role in this matter?**

g. **Have you ever expressed any reservations or opposition to the DOJ's actions, or lack thereof, in this matter?**

h. **Have you had any involvement whatsoever in any other DOJ actions involving Apple?**

    i. **If yes, please give the citations, if the cases were reported, and the docket number and date if unreported. Identify the party or parties whom you represented; describe the nature of your participation in the litigation and the final disposition of the case.**

Response: I can confirm that I had no role in approving this matter for the Department. In my role as Principal Deputy Assistant Attorney General of the Civil Rights Division, I was involved in discussions about this matter, and I reviewed documents and communications related to this matter. Consistent with my duties of confidentiality and the approach taken by past nominees who were Executive Branch lawyers, I am not able to comment on the nature of any discussions or content of any advice on this or any other matter. I have had no involvement in any other actions by the Justice Department involving Apple.

9. **You have been Principal Deputy Assistant Attorney General at the Department of Justice's Civil Rights Division since 2023. In your SJQ you state that your duties include managing the Civil Rights division's litigation docket, including the Immigrant and Employee Rights Section. In August 2023, DOJ filed a lawsuit against Space Exploration Technologies Corporation "SpaceX" for allegedly discriminating against asylees and refugees in hiring.**

    a. **When did you first learn of this lawsuit?**

    b. **Did you have any role in approving, reviewing, or assisting with the DOJ's discrimination lawsuit against Space X?**

        i. **If yes, please explain your role, including why you approved this lawsuit.**

    c. **Have you reviewed, approved, edited, or written any document related to this case? If yes, please identify which documents.**

    d. **Have you offered any advice on the DOJ's discrimination lawsuit against Space X?**

    e. **Have you sent, received, or been copied on any email, digital messages, or other communications involving this lawsuit? If yes, please explain the nature of these communications.**

    f. **Have you otherwise played any role in this case?**

    g. **Have you ever expressed any reservations or opposition to this case?**

    h. **Have you had any involvement whatsoever in any other DOJ lawsuits against Space X?**

        i. **If yes, please give the citations, if the cases were reported, and the docket number and date if unreported. Identify the party or parties whom you represented; describe the nature of your participation in the litigation and the final disposition of the case.**

Response: I can confirm that I had no role in approving this matter for the Department. I was not in the Civil Rights Division when the lawsuit was approved and filed. In my role as Deputy Associate Attorney General, I was involved in discussions about this matter, and I reviewed documents and communications related to this matter. Consistent with my duties of confidentiality and the approach taken by past nominees who were Executive Branch lawyers, I am not able to comment on the nature of any discussions or content of any advice on this or any other matter. I have had no involvement in any other lawsuits brought by the Justice Department involving Space X.

10. **In 2023, The National Counterintelligence and Security Center, the F.B.I., and the Air Force released an advisory "Safeguarding the US Space Industry: Keeping Your Intellectual Property In Orbit." This advisory was reported on in "The New York Times" on August 18, 2023 in an article titled "Intelligence Agencies Warn Foreign Spies Are Targeting U.S. Space Companies." The New York Times article states "Chinese and Russian intelligence agencies are targeting American private space companies, attempting to steal critical technologies . . . according to a new warning by American intelligence agencies." Were you aware of this advisory prior to receiving these questions? If so when did you first become aware of it?**

    Response: No.

11. **Please define the term "prosecutorial discretion."**

    Response: Black's Law Dictionary defines "prosecutorial discretion" as a "prosecutor's power to choose from the options available in a criminal case, such as filing charges, prosecuting, not prosecuting, plea-bargaining, and recommending a sentence to the court."

12. **On October 27, 2023 the DOJ filed a statement of interest in *Victor Voe v. Thomas Mansfield*. In a press release, the DOJ described this statement of interest as "challenging North Carolina's bans on gender-affirming health care for transgender minors."**

    a. **When did you first learn of this case?**

    b. **Did you have any role in approving, reviewing, or assisting with the DOJ's statement of interest?**

        i. **If yes, please explain your role, including why you approved this statement of interest.**

    c. **Have you reviewed, approved, edited, or written any document related to this case? If yes, please identify which documents.**

    d. **Have you offered any advice regarding this case?**

    e. **Have you sent, received, or been copied on any email, digital messages, or other communications involving this matter? If yes, please explain the nature of these communications.**

    f. **Have you otherwise played any role in this matter?**

    g. **Have you ever expressed any reservations or opposition to the DOJ's actions, or lack thereof, in this matter?**

h. **Have you had any involvement whatsoever in any cases regarding the provision "gender-affirming health care" to minors?**

    i. **If yes, please give the citations, if the cases were reported, and the docket number and date if unreported. Identify the party or parties whom you represented; describe the nature of your participation in the litigation and the final disposition of the case.**

Response: I can confirm that I had no role in approving this statement of interest for the Department. In my role as Principal Deputy Assistant Attorney General of the Civil Rights Division, I was involved in discussions about this matter, and I reviewed the statement of interest. Consistent with my duties of confidentiality and the approach taken by past nominees who were Executive Branch lawyers, I am not able to comment on the nature of any discussions or content of any advice on this or any other matter.

In my roles as Deputy Associate Attorney General and Principal Deputy Assistant Attorney General, I have reviewed briefs and other filings on "gender-affirming health care" to minors. In each matter, I was not an attorney on the case representing any party and I did not approve the briefs or filings.

13. **On December 4, 2023 the DOJ filed an amicus brief in *Dekker v. Secretary, Florida Agency for Health Care Admin*. In a press release, the DOJ described this brief as "in support of transgender individuals who are seeking medical treatment for gender dysphoria that is excluded from Medicaid coverage by a Florida administrative rule and state statute."**

    a. **When did you first learn of this case?**

    b. **Did you have any role in approving, reviewing, or assisting with the DOJ's amicus brief?**

        i. **If yes, please explain your role, including why you approved this amicus brief.**

    c. **Have you reviewed, approved, edited, or written any document related to this case? If yes, please identify which documents.**

    d. **Have you offered any advice on the DOJ regarding this case?**

    e. **Have you sent, received, or been copied on any email, digital messages, or other communications involving this matter? If yes, please explain the nature of these communications.**

    f. **Have you otherwise played any role in this matter?**

g. **Have you ever expressed any reservations or opposition to the DOJ's actions, or lack thereof, in this matter?**

h. **Have you had any involvement whatsoever in any cases relating to an administrative rule or state statute regarding "medical treatment for gender dysphoria"?**

   i. **If yes, please give the citations, if the cases were reported, and the docket number and date if unreported. Identify the party or parties whom you represented; describe the nature of your participation in the litigation and the final disposition of the case.**

Response: I can confirm that I had no role in approving this amicus brief for the Department. In my role as Principal Deputy Assistant Attorney General of the Civil Rights Division, I was involved in discussions about this matter, and I reviewed the brief. Consistent with my duties of confidentiality and the approach taken by past nominees who were Executive Branch lawyers, I am not able to comment on the nature of any discussions or content of any advice on this or any other matter.

In my roles as Deputy Associate Attorney General and Principal Deputy Assistant Attorney General, I have reviewed briefs and other filings regarding "medical treatment for gender dysphoria." In each matter, I was not an attorney on the case representing any party and I did not approve the briefs or filings.

14. **Have you had any involvement whatsoever in any cases relating to the "FACE Act"?**

    a. **If yes, please give the citations, if the cases were reported, and the docket number and date if unreported. Identify the party or parties whom you represented; describe the nature of your participation in the litigation and the final disposition of the case.**

       Response: In my roles as Deputy Associate Attorney General and Principal Deputy Assistant Attorney General, I have been involved in matters brought by the Department under the FACE Act. In each matter, I was not an attorney on the case representing any party and I did not approve the matter.

15. **Have you had any involvement whatsoever in any cases relating to the "Voting Rights Act"?**

    a. **If yes, please give the citations, if the cases were reported, and the docket number and date if unreported. Identify the party or parties whom you represented; describe the nature of your participation in the litigation and the final disposition of the case.**

Response: In my roles as Deputy Associate Attorney General and Principal Deputy Assistant Attorney General, I have been involved in matters brought by the Department under the Voting Rights Act. Consistent with Justice Department policy, the names of senior Department officials may appear on filings in these matters even where the officials were not directly involved in the day-to-day litigation. During my tenure as Deputy Associate Attorney General and Principal Deputy Assistant Attorney General, I have not approved any Voting Rights Act matter in which the Department was involved.

16. **In an August 25, 2022 piece, "The New York Times Magazine" describes how Jones Day "represented Trump and the Republican Party" in litigation involving Pennsylvania's election results. The piece directly quotes you as saying "[t]his lawsuit was brought for no other reason than to deprive poor people of the right to vote." However, when asked about this quote by Senator Kennedy, you responded "Senator, those were not my words."**

    a. **Were you aware that this piece was published before your hearing? When did you become aware that this piece was published?**

    Response: Yes. I read the article when it was published.

    b. **Was your statement to Senator Kennedy an accurate and truthful statement? Please explain why or why not.**

    Response: Yes. I stand by my testimony before the Committee. The quote in the New York Times article is inaccurate. I never communicated with the reporter listed in the byline or anyone in the media, directly or indirectly, about any internal discussions with my former law partners at Jones Day.

17. **Have you ever communicated with David Enrich (the author of the aforementioned piece)? Please provide a yes or no answer. If you would like to include an additional narrative response, you may do so, but only after a yes or no answer. Failure to provide a yes or no answer will be construed as a "yes."**

    a. **If yes, please identify the dates and nature of your communications with Mr. Enrich.**

    Response: No. Mr. Enrich first emailed me on March 26, 2021, to say that he was writing a book and former colleagues of mine suggested that he speak to me. I never responded to his email. He sent several emails after that asking to speak to me, including on what he described as a "not-for-attribution/confidential basis." I never responded to those emails either, and I did not otherwise communicate with him, either directly or indirectly.

18. **If the August 25, 2022 New York Times Magazine piece quotes you inaccurately, did you make any attempt to report an error with "The New York Times Magazine" or David Enrich? Please provide a yes or no answer. If you would like to include an additional narrative response, you may do so, but only after a yes or no answer. Failure to provide a yes or no answer will be construed as a "no."**

    Response: No. The partners' meeting discussed in Mr. Enrich's article was an internal, confidential meeting. As a former Jones Day partner, my confidentiality obligation to Jones Day under the firm's Partnership Agreement precluded me from discussing what happened at the meeting. Consistent with my obligation under that agreement, I never communicated with Mr. Enrich or anyone in the media, directly or indirectly, about any discussions with my former law partners at Jones Day.

19. **Were you present at the "mid-November 2020 … videoconference … with [Jones Day] partners" described in the New York Times Magazine article?**

    Response: Yes.

    a. **If you did not say "[t]his lawsuit was brought for no other reason than to deprive poor people of the right to vote," did you make any similar statements at this meeting?**

        Response: No.

    b. **What statements, if any, did you make at the meeting regarding election-related litigation?**

        Response: The partners' meeting discussed in Mr. Enrich's article was an internal, confidential meeting. I am precluded from detailing what I or others said because, as a former partner, I am bound by an ongoing confidentiality obligation to Jones Day under the firm's Partnership Agreement. However, I can affirm as I did during my hearing that the quote in the New York Times article is inaccurate. I did not make that statement or any similar statement at the meeting referenced in the article.

    c. **Have you ever characterized any election-related litigation as being brought to deprive poor people of the right to vote?**

        Response: No.

    d. **Did you discuss this meeting, the content thereof, or the statements made therein with any reporter, journalist, or member of the press? Please provide a yes or no answer. If you would like to include an additional narrative response, you may do so, but only after a yes or no answer. Failure to provide a yes or no answer will be construed as a "yes."**

i. **If yes, please identify each person you discussed this meeting with.**

Response: No. I did not discuss anything related to the meeting in question with any reporter, journalist, or member of the press. Mr. Enrich emailed me on several occasions; I did not respond to his emails or otherwise communicate with him or any other member of the press, either directly or indirectly.

e. **Did you discuss this meeting, the content thereof, or the statements made therein with anyone not employed by Jones Day? Please provide a yes or no answer. If you would like to include an additional narrative response, you may do so, but only after a yes or no answer. Failure to provide a yes or no answer will be construed as a "yes."**

i. **If yes, please identify each person you discussed this meeting with.**

Response: Yes, in preparing for the hearing before the Senate Judiciary Committee on March 20, 2024, I discussed the fact that the quote in Mr. Enrich's article was inaccurate and advised that I was unable to discuss what I said or what was discussed at the internal partners' meeting given my ongoing confidentiality obligation to Jones Day under the firm's Partnership Agreement. I had these discussions in February and March 2024 with officials from the Office of Legal Policy at the Department of Justice, attorneys from the White House Counsel's Office, and family and friends who were helping me prepare for the Committee hearing.

f. **Did you authorize any person, including any person employed at Jones Day and any person not employed at Jones Day, to share information related to this meeting with any other person? Please provide a yes or no answer. If you would like to include an additional narrative response, you may do so, but only after a yes or no answer. Failure to provide a yes or no answer will be construed as a "yes."**

i. **If yes, please identify each person whom you authorized to share information regarding this meeting.**

Response: No.

g. **Did anyone at Jones Day tell you that they provided information about this meeting to any reporter, journalist, or member of the press? Please provide a yes or no answer. If you would like to include an additional narrative response, you may do so, but only after a yes or no answer. Failure to provide a yes or no answer will be construed as a "yes."**

Response: No.

h. **Do you have knowledge of the identity of any individual or individuals who provided any information related to the August 25, 2022 article to any reporter, journalist, or member of the press? Please provide a yes or no answer. If you would like to include an additional narrative response, you may do so, but only after a yes or no answer. Failure to provide a yes or no answer will be construed as a "yes."**

Response: No.

i. **Did you either directly or through an intermediary provide information about this meeting to any reporter, journalist, or member of the press? Please provide a yes or no answer. If you would like to include an additional narrative response, you may do so, but only after a yes or no answer. Failure to provide a yes or no answer will be construed as a "yes."**

Response: No.

20. **Do you agree with the sentiment that (some or all of) the 2020 litigation involving Pennsylvania's election results was brought to deprive poor people of the right to vote? Please provide a yes or no answer. If you would like to include an additional narrative response, you may do so, but only after a yes or no answer. Failure to provide a yes or no answer will be construed as a "yes."**

Response: No.

21. **On what date did you join the board of the Washington Lawyers Committee for Civil Rights and Urban Affairs?**

Response: I do not have records of the specific date, but it was in late December 2020.

22. **On what date did you leave the board of the Washington Lawyers Committee for Civil Rights and Urban Affairs?**

Response: I do not have records of the specific date, but it was in mid-January 2021.

23. **Did you make any financial donations to the Washington Lawyers Committee for Civil Rights and Urban Affairs?**

a. **If yes, please list all donations to the organization, noting the year and amount donated.**

Response: No.

24. **Did you solicit, procure, or facilitate any financial donations to the Washington Lawyers Committee for Civil Rights and Urban Affairs from any source other than yourself?**

a. **If yes, please identify the donor and year of contribution.**

Response: No.

25. **Did you conduct any due diligence on the Washington Lawyers Committee for Civil Rights and Urban Affairs prior to joining the board?**

Response: Yes.

a. **Did you "google" or carry out equivalent search engine based research on the Washington Lawyers Committee for Civil Rights and Urban Affairs prior to joining the board?**

Response: Yes.

b. **Did you read any amicus briefs filed by the Washington Lawyers Committee for Civil Rights and Urban Affairs prior to joining the board?**

Response: No.

26. **In 2019, the Washington Lawyers Committee for Civil Rights and Urban Affairs filed an Amicus Brief in support of granting parole to Mutulu Shakur. Were you aware of this brief prior to joining the board?**

Response: No. I served on the Washington Lawyers Committee's Board of Directors for approximately one month between December 2020 and January 2021. I was not on the Board of Directors in 2019, and I was not aware of this brief prior to joining or at any point during my brief service on the board.

27. **In a June 8, 2020 "The Keystone" reported that Jonathan Smith, executive director of the Washington Lawyers Committee for Civil Rights and Urban Affairs, made the following statement: "[i]f you look at [police] union contracts, there are very substantial barriers to accountability that are built into those contracts." Do you agree with this statement?**

Response: I served on the Washington Lawyers Committee's Board of Directors for approximately one month between December 2020 and January 2021. During that time, I did not even attend a board meeting. I was not on the board in June 2020 when this statement was made, so I am not familiar with it, nor was I familiar with it prior to joining or at any point during my brief service on the board. I have never taken this position.

28. **On July 15, 2020 Kaitlin Banner, Deputy Director of the Washington Lawyers Committee wrote the following "public comment" on the organization's letterhead:**

> ***The Washington Lawyers' Committee for Civil Rights & Urban Affairs enthusiastically supports the D.C. State Board of Education's Resolution SR20-10, To Recognize the Importance of Removing All***

Police From D.C. Public and Charter Schools. We encourage passage of this resolution . . . for the following three key reasons:

i. ***1. School police disproportionately harm Black & Latinx students, and students with disabilities.***
ii. ***2. School police don't create real school safety.***
iii. ***3. School police are expensive and an inefficient use of limited resources.***

b. **Do you agree with this position?**

Response: I served on the Washington Lawyers Committee's Board of Directors for approximately one month between December 2020 and January 2021. During that time, I did not even attend a board meeting. I was not on the board in July 2020 when this statement was made, so I am not familiar with it, nor was I familiar with it prior to joining or at any point during my brief service on the board. I have never taken this position.

29. **According to the Washington Post "2023 was District's deadliest year in more than two decades" were you aware of this statistic prior to receiving these questions?**

Response: Yes. I read the article when it was published.

a. **According to the same Washington Post article "19 children and teens were slain [in D.C.] last year" were you aware of this statistic prior to receiving these questions?**

Response: Yes. I read the article when it was published.

b. **According to the same Washington Post article, 17 year-old Jefferson Luna-Perez "was shot in the parking lot of Roosevelt High School in Northwest after he had attended classes that day." Were you aware of this tragic loss of life prior to receiving these questions?**

Response: Yes. I read the article when it was published.

30. **You were a named counsel in *Arzoumanian v. Munchener Ruckversicherungs-Gesellschaft Aktiengesellschaft AG*.**

a. **Please explain this cases factual background.**

Response: The case involved California's amendment of its Code of Civil Procedure in 2000 to create a cause of action and an extended statute of limitations for insurance claims arising out of the persecution of Armenians between 1915 and 1923 in the Ottoman Empire.

b. **What was the nature of your involvement in this case?**

Response: As a career attorney on the Appellate Staff of the Civil Division of the Justice Department, I was assigned to that matter and involved in drafting the

amicus brief submitted in response to the Supreme Court's invitation to the Solicitor General to express the views of the United States.

31. **Rep. Nydia Velázquez (D. N.Y.) stated on X "As a lawyer, Sparkle Sooknanan worked for multiple hedge funds that were squeezing money from Puerto Rico during its' debt crisis. Her nomination to the D.C. District Court is an insult to the people of Puerto Rico." Do you agree with Rep. Nydia Velázquez's description of your record?**

    Response: No.

32. **When Senator Hawley asked you if you were "lead counsel" in the Puerto Rican debt litigation you replied "Senator, I was not lead counsel." However, in SJQ 17 (3) you said you "led our team through proceedings before the district court, First Circuit, and United States Supreme Court related to the perfection of our clients' security interests in bonds issued by Puerto Rico's pension system." (Emphasis added). Likewise, Jones Day appears to have previously put out a press release stating:**

    ***One of* [Ms. Sooknanan's] *significant representations was leading the team representing a group of investors in bonds issued by Puerto Rico's pension system. Ms. Sooknanan spearheaded a unique litigation plan, including filing a constitutional 'takings' claim to recover more than $1 billion from the United States for the confiscation of property.* (Emphasis added).**

    a. **Was your statement to Senator Hawley an accurate and truthful statement? Please explain why or why not.**

        Response: Yes, my statement to Senator Hawley was accurate and truthful. I was not lead counsel for Jones Day's representation of clients in Puerto Rico's debt litigation, which spanned several years and involved various streams of litigation. I was first assigned to the matter as an associate, and for most of the time I worked on the matter, I was an associate being supervised by several partners. After being admitted to Jones Day's partnership in 2020, I worked on the matter as a partner for approximately six months before leaving the firm, and during that time I was the most junior partner assigned to the matter being supervised by several more senior partners. Throughout the representation, a senior partner at Jones Day served as lead counsel, meaning that he set the direction of the litigation, approved filings and significant decisions, and managed the client relationships. Although I led aspects of certain workstreams and appeared as counsel in certain matters, at all times I was working under the direction of several partners, including the senior partner serving as lead counsel.

33. **Progressive commenter Matt Stoller described you as a "straight-up corporatist." Do you agree with Mr. Stoller's description of your worldview?**

Response: No. Lawyers are ethically obligated to make arguments that are in service of each client's interests and to zealously advocate on the client's behalf without regard for any personal views the lawyer may hold. My personal views have not played a role in the arguments that I have made on behalf of clients across a broad array of cases throughout my career. In the same way, my personal views would not play a role in my decision-making if I were confirmed as a judge.

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

    Response: No.

35. **Do you consider a law student's public endorsement of or praise for an organization listed as a "Foreign Terrorist Organization," such as Hamas or the Popular Front for the Liberation of Palestine, to be disqualifying for a potential clerkship in your chambers? Please provide a yes or no answer. If you would like to include an additional narrative response, you may do so, but only after a yes or no answer. Failure to provide a yes or no answer will be construed as a "no."**

    Response: Yes.

36. **In the aftermath of the brutal terrorist attack on Israel on October 7, 2023 the president of New York University's student bar association wrote "Israel bears full responsibility for this tremendous loss of life. This regime of state-sanctioned violence created the conditions that made resistance necessary." Do you consider such a statement, publicly made by a law student, to be disqualifying with regards to a potential clerkship in your chambers? Please provide a yes or no answer. If you would like to include an additional narrative response, you may do so, but only after a yes or no answer. Failure to provide a yes or no answer will be construed as a "no."**

    Response: Yes.

37. **Please describe the relevant law governing how a prisoner in custody under sentence of a federal court may seek and receive relief from the sentence.**

    Response: Under 28 U.S.C. § 2255, a prisoner in custody under a sentence of a federal court may seek and receive relief "upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack." 28 U.S.C. § 2255(a). A federal prisoner may seek relief under 28 U.S.C. § 2241 by filing an application for a writ of habeas corpus only where a motion under § 2255 is "is inadequate or ineffective to test the legality of his detention." 28 U.S.C. § 2255(e).

38. **Please explain the facts and holding of the Supreme Court decisions in *Students for Fair Admissions, Inc. v. University of North Carolina* and *Students for Fair Admissions Inc. v. President & Fellows of Harvard College*.**

    Response: In *Students for Fair Admissions, Inc. v. University of North Carolina* and *Students for Fair Admissions Inc. v. President & Fellows of Harvard College*, the Supreme Court addressed the use of race as a factor in making student admission decisions at the University of North Carolina and Harvard College. First, the Supreme Court held that the plaintiff, Students for Fair Admissions, had organizational standing to sue on behalf of its members. Next, the Court concluded that the race-based admissions policies of the University of North Carolina and Harvard College did not survive strict scrutiny. The Court held that the universities' policies violated the Fourteenth Amendment's Equal Protection Clause and Title VI of the Civil Rights Act of 1964.

39. **Have you ever participated in a decision, either individually or as a member of a group, to hire someone or to solicit applications for employment?**

    If yes, please list each job or role where you participated in hiring decisions.

    Response: Yes. I have participated in hiring decisions in every job I have had since graduating from law school.

40. **Have you ever given preference to a candidate for employment or for another benefit (such as a scholarship, internship, bonus, promotion, or award) on account of that candidate's race, ethnicity, religion, sex, sexuality, or gender identity?**

    Response: No.

41. **Have you ever solicited applications for employment on the basis of race, ethnicity, religion, sex, sexuality, or gender identity?**

    Response: No.

42. **Have you ever worked for an employer (such as a law firm) that gave preference to a candidate for employment or for another benefit (such as a scholarship, internship, bonus, promotion, or award) on account of that candidate's race, ethnicity, religion, sex, sexuality, or gender identity?**

    If yes, please list each responsive employer and your role at that employer. Please also describe, with respect to each employer, the preference given. Please state whether you played any part in the employer's decision to grant the preference.

    Response: To the best of my knowledge, no.

43. **Under current Supreme Court and D.C. Circuit precedent, are government classifications on the basis of race subject to strict scrutiny?**

Response: Yes. The Supreme Court has held that "all racial classifications, imposed by whatever federal, state, or local governmental actor, must be analyzed by a reviewing court under strict scrutiny." *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 227 (1995).

44. **Please explain the holding of the Supreme Court's decision in *303 Creative LLC v. Elenis*.**

Response: In *303 Creative LLC v. Elenis*, the Supreme Court held that the First Amendment's free speech guarantee prohibited Colorado from compelling a wedding website designer to create websites conveying messages inconsistent with her belief that marriage should be reserved to unions between one man and one woman. *See* 600 U.S. 570, 589 (Colorado may not compel the website designer to "speak as the State demands or face sanctions for expressing her own beliefs").

45. **In *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 642 (1943), Justice Jackson, writing for the Court, said: "*If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein*."**

Is this a correct statement of the law?

Response: Yes. The Supreme Court recently cited *Barnette* in *303 Creative LLC v. Elenis*, 600 U.S. 570, 584-85 (2023).

46. **How would you determine whether a law that regulates speech is "content-based" or "content-neutral"? What are some of the key questions that would inform your analysis?**

Response: In determining whether a law that regulates speech is "content-based" or "content-neutral," I would follow the approach set forth by Supreme Court and D.C. Circuit precedent. The Supreme Court has explained that government regulation of speech is content based if it "target[s] speech based on its communicative content," *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 163 (2015), whereas content-neutral regulations are those that are justified without reference to the content of the regulated speech, *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 566 (2011). Laws that are "facially content neutral" will be "considered content-based regulations of speech" if they "cannot be justified without reference to the content of the regulated speech" or they "were adopted by the government because of agreement with the message the speech conveys." *Reed*, 576 U.S. at 164. Supreme Court precedent identify various key questions that would inform any analysis of this issue. If confirmed, I would faithfully apply Supreme Court and D.C. Circuit precedent on this issue.

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

Response: The Supreme Court recently reiterated that "[t]rue threats are serious expressions conveying that a speaker means to commit an act of unlawful violence." *Counterman v. Colorado*, 600 U.S. 66, 74 (2023).

48. **Under Supreme Court and D.C. Circuit precedent, what is a "fact" and what sources do courts consider in determining whether something is a question of fact or a question of law?**

Response: There are three general categories: questions of law, questions of fact, and questions of mixed law and fact. The Supreme Court has noted that "the appropriate methodology for distinguishing questions of fact from questions of law has been, to say the least, elusive" and "in those instances in which Congress has not spoken and in which the issue falls somewhere between a pristine legal standard and a simple historical fact, the fact/law distinction at times has turned on a determination that, as a matter of the sound administration of justice, one judicial actor is better positioned than another to decide the issue in question." *Miller v. Fenton*, 474 U.S. 104, 113-14 (1985).

49. **Which of the four primary purposes of sentencing—retribution, deterrence, incapacitation, and rehabilitation—do you personally believe is the most important?**

Response: Congress has required federal sentencing judges to consider each of these purposes in making a sentencing decision under 18 U.S.C. § 3553(a), but Congress has not directed that one of these purposes is more important than any other.

50. **Please identify a Supreme Court decision from the last 50 years that you think is particularly well-reasoned and explain why.**

Response: As a federal judicial nominee, the Code of Conduct for United States Judges precludes me from commenting on the merits of binding precedent of the Supreme Court, all of which I will faithfully apply if confirmed.

51. **Please identify a D.C. Circuit judicial opinion from the last 50 years that you think is particularly well-reasoned and explain why.**

Response: As a federal judicial nominee, the Code of Conduct for United States Judges precludes me from commenting on the merits of binding precedent of the D.C. Circuit, all of which I will faithfully apply if confirmed.

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

Response: 18 U.S.C. § 1507 makes it a crime for any person "with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent

of influencing any judge, juror, witness, or court officer, in the discharge of his duty, pickets or parades in or near a building housing a court of the United States, or in or near a building or residence occupied or used by such judge, juror, witness, or court officer, or with such intent uses any sound-truck or similar device or resorts to any other demonstration in or near any such building or residence."

53. **Is 18 U.S.C. § 1507 constitutional?**

Response: Neither the Supreme Court nor D.C. Circuit has specifically considered the constitutionality of 18 U.S.C. § 1507, but the Supreme Court has upheld a state statute "modeled after" 18 U.S.C. § 1507. *See Cox v. Louisiana*, 379 U.S. 559 (1965). I am also aware that the D.C. Circuit has upheld the constitutionality of 40 U.S.C. § 6135, a federal statute that makes it unlawful to "parade, stand, or move in processions or assemblages in the Supreme Court Building or grounds." *Hodge v. Talkin*, 799 F.3d 1145, 1149 (D.C. Cir. 2015). As a federal judicial nominee, the Code of Conduct for United States Judges precludes me from expressing an opinion on an issue that could come before me as a judge.

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

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

Response: As a federal judicial nominee, the Code of Conduct for United States Judges precludes me from commenting on the correctness of a binding Supreme Court precedent, which I would faithfully apply as a judge. But consistent with the practice of prior judicial nominees, I can state that *Brown v. Board of Education* was correctly decided because it falls within a small category of cases that present issues unlikely to ever come before me.

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

Response: As a federal judicial nominee, the Code of Conduct for United States Judges precludes me from commenting on the correctness of a binding Supreme Court precedent, which I would faithfully apply as a judge. But consistent with the practice of prior judicial nominees, I can state that *Loving v. Virginia* was correctly decided because it falls within a small category of cases that present issues unlikely to ever come before me.

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

Response: As a federal judicial nominee, the Code of Conduct for United States Judges precludes me from expressing an opinion on the correctness of binding Supreme Court precedent, which I would faithfully apply as a judge.

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

Response: The Supreme Court's decision in *Dobbs v. Jackson Women's Health* overturned *Roe v. Wade*. As a federal judicial nominee, the Code of Conduct for United States Judges precludes me from expressing an opinion on the correctness of binding Supreme Court precedent. If confirmed, I would faithfully apply all Supreme Court precedent, including *Dobbs*.

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

Response: The Supreme Court's decision in *Dobbs v. Jackson Women's Health* overturned *Planned Parenthood v. Casey*. As a federal judicial nominee, the Code of Conduct for United States Judges precludes me from expressing an opinion on the correctness of binding Supreme Court precedent. If confirmed, I would faithfully apply all Supreme Court precedent, including *Dobbs*.

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

Response: As a federal judicial nominee, the Code of Conduct for United States Judges precludes me from expressing an opinion on the correctness of binding Supreme Court precedent, which I would faithfully apply as a judge.

g. **Was *District of Columbia v. Heller* correctly decided?**

Response: As a federal judicial nominee, the Code of Conduct for United States Judges precludes me from expressing an opinion on the correctness of binding Supreme Court precedent, which I would faithfully apply as a judge.

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

Response: As a federal judicial nominee, the Code of Conduct for United States Judges precludes me from expressing an opinion on the correctness of binding Supreme Court precedent, which I would faithfully apply as a judge.

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

Response: As a federal judicial nominee, the Code of Conduct for United States Judges precludes me from expressing an opinion on the correctness of binding Supreme Court precedent, which I would faithfully apply as a judge.

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

Response: As a federal judicial nominee, the Code of Conduct for United States Judges precludes me from expressing an opinion on the correctness of binding Supreme Court precedent, which I would faithfully apply as a judge.

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

Response: As a federal judicial nominee, the Code of Conduct for United States Judges precludes me from expressing an opinion on the correctness of binding Supreme Court precedent, which I would faithfully apply as a judge.

l. **Were *Students for Fair Admissions, Inc. v. University of North Carolina* and *Students for Fair Admissions Inc. v. President & Fellows of Harvard College* correctly decided?**

Response: As a federal judicial nominee, the Code of Conduct for United States Judges precludes me from expressing an opinion on the correctness of binding Supreme Court precedent, which I would faithfully apply as a judge.

m. **Was *303 Creative LLC v. Elenis* correctly decided?**

Response: As a federal judicial nominee, the Code of Conduct for United States Judges precludes me from expressing an opinion on the correctness of binding Supreme Court precedent, which I would faithfully apply as a judge.

55. **What legal standard would you apply in evaluating whether or not a regulation or statutory provision infringes on Second Amendment rights?**

Response: I would apply binding Supreme Court precedent in evaluating whether or not a regulation or statutory provision infringes on Second Amendment rights. Most recently, in *New York Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111 (2022), the Court held that "when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.'" *Id.* at 2126 (quoting *Konigsberg v. State Bar of Cal.*, 366 U.S. 36, 50 n.10 (1961)). In *Bruen*, the Court stated that, based on its interpretation of the Second Amendment's text and original public meaning, the Amendment protects "the right of an ordinary, law-abiding citizen to possess a handgun in the home for self-defense" and "to carry a handgun for self-defense outside the home." *Id.* at 2122.

56. **Demand Justice is a progressive organization dedicated to "restor[ing] ideological balance and legitimacy to our nation's courts."**
    a. **Has anyone associated with Demand Justice, including Brian Fallon, Christopher Kang, Tamara Brummer, Jen Dansereau, and/or Becky Bond, requested that you provide any services, including but not limited to**

research, advice, analysis, writing or giving speeches, or appearing at events or on panels?

Response: No.

b. **Are you currently in contact with anyone associated with Demand Justice, including, but not limited to: Brian Fallon, Christopher Kang, Tamara Brummer, Jen Dansereau, and/or Becky Bond,? If so, who?**

Response: No.

c. **Have you ever been in contact with anyone associated with Demand Justice, including, but not limited to: Brian Fallon, Christopher Kang, Tamara Brummer, Jen Dansereau, and/or Becky Bond,? If so, who?**

Response: No.

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

    Response: No.

    b. **Are you currently in contact with anyone associated with the Alliance for Justice including, but not limited to: Rakim Brooks, Betsy Miller Kittredge, Nan Aron, Jake Faleschini, and/or Zachery Morris? If so, who?**

    Response: No.

    c. **Have you ever been in contact with anyone associated with Alliance for Justice, including, but not limited to: Rakim Brooks, Betsy Miller Kittredge, Nan Aron, Jake Faleschini, and/or Zachery Morris? If so, who?**

    Response: No.

58. **Arabella Advisors is a progressive organization founded "to provide strategic guidance for effective philanthropy" that has evolved into a "mission-driven, Certified B Corporation" to "increase their philanthropic impact."**
    a. **Has anyone associated with Arabella Advisors requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**
        i. **Please include in this answer anyone associated with Arabella's subsidiaries, including the Sixteen Thirty Fund, the New Venture**

Fund, the Hopewell Fund, the Windward Fund, the North Fund, or any other such Arabella dark-money fund.

Response: No.

b. **Are you currently in contact with anyone associated with Arabella Advisors, including, but not limited to: Eric Kessler, Himesh Bhise, Joseph Brooks, Isaiah Castilla, and/or Saurabh Gupta?**
   i. **Please include in this answer anyone associated with Arabella's subsidiaries, including the Sixteen Thirty Fund, the New Venture Fund, the Hopewell Fund, the Windward Fund, the North Fund, or any other such Arabella dark-money fund that is still shrouded.**

   Response: No.

c. **Have you ever been in contact with anyone associated with Arabella Advisors, including, but not limited to: Eric Kessler, Himesh Bhise, Joseph Brooks, Isaiah Castilla, and/or Saurabh Gupta?**
   i. **Please include in this answer anyone associated with Arabella's subsidiaries, such as the Sixteen Thirty Fund, the New Venture Fund, the Hopewell Fund, the Windward Fund, the North Fund, or any other such Arabella dark-money fund that is still shrouded.**

   Response: No.

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

    Response: No.

    b. **Are you currently in contact with anyone associated with the Open Society Foundations, including but not limited to: George Soros, Alexander Soros, Mark Malloch-Brown, and/or Binaifer Nowrojee?**

    Response: No.

    c. **Have you ever been in contact with anyone associated with the Open Society Foundations including but not limited to: George Soros, Alexander Soros, Mark Malloch-Brown, and/or Binaifer Nowrojee?**

    Response: No.

    d. **Have you ever received any funding, or participated in any fellowship or similar program affiliated with the Open Society network?**

Response: No.

60. **Fix the Court is a "non-partisan, 501(C)(3) organization that advocates for non-ideological 'fixes' that would make the federal courts, and primarily the U.S. Supreme Court, more open and more accountable to the American people."**
    a. **Has anyone associated with Fix the Court requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

       Response: No.

    b. **Are you currently in contact with anyone associated with Fix the Court, including, but not limited to: Gabe Roth, and/or Josh Cohen? If so, who?**

       Response: No.

    c. **Have you ever been in contact with anyone associated with Fix the Court including, but not limited to: Gabe Roth, and/or Josh Cohen? If so, who?**

       Response: No.

61. **The Raben Group is a lobbying group that "champions diversity, equity, and justice as core values that ignite our mission for impactful change in corporate, nonprofit, government and foundation work." The group prioritizes judicial nominations and its list of clients have included the Open Society Foundations, the American Civil Liberties Union, the New Venture Fund, the Sixteen Thirty Fund, and the Hopewell Fund. It staffs the Committee for a Fair Judiciary.**
    a. **Has anyone associated with The Raben Group requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

       Response: No.

    b. **Are you currently in contact with anyone associated with The Raben Group, including but not limited to: Robert Raben, Donald Walker, Patty First, Joe Onek, Gara LaMarche, Steve Sereno, Dylan Tureff and/or Katherine Huffman? If so, who?**

       Response: No.

    c. **Have you ever been in contact with anyone associated with The Raben Group including but not limited to: Robert Raben, Donald Walker, Patty First, Joe Onek, Gara LaMarche, Steve Sereno, Dylan Tureff, and/or Katherine Huffman? If so, who?**

       Response: Yes. After my nomination was announced, I was introduced to Robert Raben through a mutual friend and had one telephone call with him on February 26, 2024. Dylan Tureff and Ethan Ellis followed up with emails.

d. **Has anyone associated with the Raben Group offered to assist you with your nomination, including but not limited to organizing letters of support?**

Response: Yes, after my nomination was announced, I was introduced to Robert Raben through a mutual friend, and he offered his general assistance. I had one telephone call with him on February 26, 2024. To my knowledge, no one at the Raben Group had any role in the letters of support submitted to the Committee.

62. **The Committee for a Fair Judiciary "fights to confirm diverse and progressive federal judges to counter illegitimate right-wing dominated courts" and is staffed by founder Robert Raben.**
    a. **Has anyone associated with the Committee for a Fair Judiciary requested that you provide services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

    Response: No.

    b. **Are you currently in contact with anyone associated with the Committee for a Fair Judiciary, including, but not limited to: Jeremy Paris, Erika West, Elliot Williams, Nancy Zirkin, and/or Joe Onek? If so, who?**

    Response: No.

    c. **Have you ever been in contact with anyone associated with the Committee for a Fair Judiciary, including, but not limited to: Jeremy Paris, Erika West, Elliot Williams, Nancy Zirkin, and/or Joe Onek? If so, who?**

    Response: No.

63. **The American Constitution Society is "the nation's foremost progressive legal organization" that seeks to "support and advocate for laws and legal systems that redress the founding failures of our Constitution, strengthen our democratic legitimacy, uphold the role of law, and realize the promise of equality for all, including people of color, women, LGBTQ+ people, people with disabilities, and other historically excluded communities."**
    a. **Has anyone associated with the American Constitution Society, requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

    Response: No.

    b. **Are you currently in contact with anyone associated with the American Constitution Society including, but not limited to Russ Feingold? If so, who?**

    Response: No.

    c. **Have you ever been in contact with anyone associated with the American Constitution Society including, but not limited to Russ Feingold? If so, who?**

Response: No.

64. **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: In September 2023, I submitted an application to the District of Columbia Federal Law Enforcement Nominating Commission. I interviewed with the Commission and Congresswoman Eleanor Holmes Norton in October 2023. On January 2, 2024, I was contacted by the White House Counsel's Office about moving forward with vetting for this position. Since then, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On February 21, 2024, the President announced his intent to nominate me.

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

Response: No.

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

Response: No.

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

Response: No.

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

Response: No.

69. **During or leading up to your selection process did you talk with any officials from or anyone directly associated with Fix the Court, or did anyone do so on your behalf? If so, what was the nature of those discussions?**

Response: No.

70. **During or leading up to your selection process, did you talk with any officials from or anyone directly associated with The Raben Group or the Committee for a Fair**

Judiciary, or did anyone do so on your behalf? If so, what was the nature of those discussions?

Response: No.

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

Response: No.

72. **Since you were first approached about the possibility of being nominated, did anyone associated with the Biden administration or Senate Democrats give you advice about which cases to list on your committee questionnaire?**
    a. **If yes,**
        i. **Who?**
        ii. **What advice did they give?**
        iii. **Did they suggest that you omit or include any particular case or type of case in your questionnaire?**

Response: No.

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

Response: In September 2023, I submitted an application to the District of Columbia Federal Law Enforcement Nominating Commission. I interviewed with the Commission and Congresswoman Eleanor Holmes Norton in October 2023. On January 2, 2024, I was contacted by the White House Counsel's Office about moving forward with vetting for this position. Since then, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On February 21, 2024, the President announced his intent to nominate me.

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

Response: I received these questions from the Office of Legal Policy on March 27, 2024. I reviewed the questions, consulted my records, prepared answers, and reviewed my answers. The Office of Legal Policy provided limited feedback on my draft answers, which I implemented to the extent I agreed with them. I then transmitted these answers to the Office of Legal Policy for submission to the Senate Judiciary Committee.

Senator Mazie K. Hirono
Senate Judiciary Committee

Nominations Hearing | March 20, 2024
Questions for the Record for Sparkle L. Sooknanan

Sexual Harassment
As part of my responsibility as a member of this committee to ensure the fitness of nominees, I ask each nominee to answer two questions:

QUESTIONS:

1. **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.

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

   Response: No.

Senator Jon Ossoff
Questions for the Record for Sparkle L. Sooknanan
March 20, 2024

1. **Will you pledge to faithfully apply the law without bias and without regard for your personal policy or political preferences?**

   Response: Yes.

2. **How will you approach First Amendment cases?**

   Response: If confirmed, I will approach First Amendment cases, and all other cases, by consulting binding Supreme Court and D.C. Circuit precedent and faithfully applying it to the case before me.

   a. **In your view, why are First Amendment protections of freedom of speech, publication, assembly, and exercise of religion vital in our society?**

      Response: The freedoms protected in the First Amendment—the freedom of speech, religion, press, assembly, and the right to petition the government—are all fundamental to who we are as a Nation. As Justice Jackson so eloquently explained: "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 642 (1943).

3. **In your experience, why is it critical that indigent defendants have access to public defense under the Sixth Amendment right to counsel and precedent set in *Gideon v. Wainwright*?**

   Response: The right to counsel is paramount. Of the rights protected in the Sixth Amendment, the right to counsel is the most important, because it affects a defendant's ability to assert all the other rights. As the Supreme Court explained in *Gideon v. Wainwright*, "our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him." 372 U.S. 335, 344 (1963).

4. **In your experience, what are the challenges faced by parties in civil or criminal proceedings for whom English is not their first language?**

   Response: Individuals for whom English is not their first language face many challenges

in navigating our justice system. In my experience representing indigent criminal defendants, I have seen this firsthand. For example, limited English proficiency can lead to communication barriers with counsel and make it difficult for defendants to understand the implications of the decisions they make.

a. **What do you see as the role of language access in courts in protecting due process rights and ensuring access to justice?**

   Response: Courts play an important role in ensuring that limited English proficient parties have equal access to our justice system by, for example, providing interpretation and translation services.

Senator Mike Lee
Questions for the Record
Sparkle Leah Sooknanan, Nominee for District Court Judge for the District of Columbia

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

   Response: The job of a district court judge is to listen to the parties, weigh the facts, and apply the law to those facts. My philosophy is that you should do all those things in a fair-minded way and follow the law and facts to the appropriate conclusion in every case. If confirmed, I would approach each case by setting aside any personal views or preconceptions I might have about how the case should be resolved and make a decision based on binding precedent and the record before me.

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

   Response: When deciding cases that involve constitutional or statutory interpretation, I would first determine whether the Supreme Court or D.C. Circuit had previously interpreted the specific constitutional or statutory provision at issue. If such precedents exist, I would faithfully follow them. In the absence of such precedents, I would begin with the text of the constitutional provision or statute in question, which I would give controlling weight, and I would interpret the text in a manner consistent with the methods of interpretation that the Supreme Court has used in the most analogous circumstance.

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

   Response: Please see my response to Question 2.

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

   Response: The text and original meaning of a constitutional provision play an important role when interpreting the Constitution. I would also look to Supreme Court or D.C. Circuit precedent interpreting the specific constitutional provision.

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

   Response: In the absence of binding Supreme Court or D.C. Circuit precedent on the statutory provision at issue, I would look to the statute's text, and if that text had a clear meaning, I would apply that meaning to resolve the case.

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

Response: The text of a statute or constitutional provision should generally be interpreted in accordance with the ordinary public meaning of its terms at the time of enactment. *See, e.g.*, *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1738 (2020).

7. What are the constitutional requirements for standing?

Response: There are three elements that constitute the "irreducible constitutional minimum of standing": (1) "the plaintiff must have suffered an 'injury in fact'—an invasion of a legally protected interest" which is "concrete and particularized" and "actual or imminent, not 'conjectural' or 'hypothetical;'" (2) "there must be a causal connection between the injury and the conduct complained of—the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court;" and (3) "it must be likely as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992).

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

Response: Congress's powers are limited to those powers enumerated in the Constitution. But dating back to *McCulloch v. Maryland*, 17 U.S. 316 (1819), the Supreme Court has recognized that the Necessary and Proper Clause gives Congress authority to enact laws that are necessary and proper to carrying out Congress's enumerated powers. The Court has not provided an exhaustive list of the types of authority the Necessary and Proper Clause provides.

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

Response: If confirmed, I would evaluate the constitutionality of a law enacted without reference to a specific Constitutional enumerated power based on binding Supreme Court and D.C. Circuit precedent. Congress's authority to act does not "depend on recitals of the power which it undertakes to exercise." *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 570 (2012).

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

Response: The Supreme Court has held that the Constitution—through the Due Process Clauses of the Fifth and Fourteenth Amendments—protects rights that are not expressly enumerated in the Constitution. The Court has described these rights as rights that are "deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty." *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997). They include, among others, the right to marry, *Loving v. Virginia*, 388 U.S. 1 (1967), the right to have children, *Skinner v. Oklahoma*, 316 U.S. 535 (1942), and the right to

direct the education and upbringing of one's children, *Meyer v. Nebraska*, 262 U.S. 390 (1923); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925).

11. What rights are protected under substantive due process?

Response: Please see my response to Question 10.

12. If you believe substantive due process protects some personal rights such as a right to contraceptives, 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: The Supreme Court has held that the economic rights at stake in *Lochner v. New York* are not protected by the Constitution. *See West Coast Hotel Co. v. Parrish,* 300 U.S. 379 (1937). By contrast, the Supreme Court has held that a right to contraceptives is protected by the Constitution. *See Griswold v. Connecticut*, 381 U.S. 479 (1965). If confirmed, I would faithfully apply all Supreme Court and D.C. Circuit precedent.

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

Response: The Commerce Clause of Article I grants Congress the power to regulate "three broad categories of activity": (1) "the use of the channels of interstate commerce," (2) "the instrumentalities of interstate commerce, or persons or things in interstate commerce," 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 described the "traditional indicia of suspectedness" as whether a group's "immutable characteristic determined solely by the accident of birth," or if the group is "saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process." *Johnson v. Robison*, 415 U.S. 361, 375 n.14 (1974).

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

Response: Checks and balances and separation of powers are important structural features of the Constitution that prevent any one branch of government from accumulating excessive power. *See, e.g.*, *Seila Law LLC v. Consumer Fin. Prot. Bureau*, 140 S. Ct. 2183, 2202 (2020) (the Founders' "solution to governmental power and its perils was simple: divide it"). As the Supreme Court has explained, "the system of separated powers and checks and balances established in the Constitution

was regarded by the Framers as a self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of the other." *Morrison v. Olson*, 487 U.S. 654, 693 (1988)

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 examine the relevant precedents of the Supreme Court and the D.C. Circuit as well as the constitutional text to determine whether the challenged action exceeded the branch's authority.

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

Response: Judges should treat all parties appearing before them with respect. But a judge's personal beliefs or feelings should play no role in judicial decision-making. The role of a judge is to faithfully follow the rule of law and resolve each case based on the record and governing law.

18. Which is worse; invalidating a law that is, in fact, constitutional, or upholding a law that is, in fact, unconstitutional?

Response: Both are equally undesirable outcomes that judges must work to avoid.

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: I have not studied these historical trends. I believe that judges should review each case individually and apply the law to the facts fairly and impartially. If confirmed, that is how I would approach every case.

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

Response: Black's Law Dictionary defines judicial review as "a court's review of a lower court's or an administrative body's factual or legal findings." It defines judicial supremacy as "the doctrine that interpretations of the Constitution by the federal judiciary in the exercise of judicial review, esp. U.S. Supreme Court interpretations, are binding on the coordinate branches of the federal government and the states."

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: Federal and state legislative and executive officials are bound by an oath to support the Constitution. *See* U.S. Const., art. VI. The Supreme Court has also stated that lawmakers must follow the decisions of the Supreme Court interpreting the Constitution. *See Cooper v. Aaron*, 358 U.S. 1, 18 (1958).

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: Federalist 78 is an important reminder of a judge's role in our constitutional structure. Judges are bound to fairly and impartially apply the law to the facts of each case, and to decide only properly presented cases and controversies within the meaning of Article III.

23. As a federal judge, you would be bound by both Supreme Court precedent and prior circuit court precedent. What is the duty of a federal 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 federal judge extend the precedent to cover new cases, or limit its application where appropriate and reasonably possible?

Response: Federal judges are bound by the holdings of the Supreme Court and their circuit, without regard to any personal views about the correctness of that precedent. Whether a particular precedent is binding on a given fact pattern is a context-specific question dependent both on the facts and circumstances of the particular case and the decision in the prior case. If confirmed, I would apply all binding precedent regardless of any views I might have about it.

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

Response: None. As the U.S. Sentencing Guidelines make clear, a defendants "race, sex, national origin, creed, religion, and socio-economic status" are characteristics that "are not relevant in the determination of a sentence." U.S.S.G. § 5H1.10 (2024).

25. The Biden Administration has defined "equity" as: "the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such

treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality." Do you agree with that definition? If not, how would you define equity?

Response: I am not aware of a consensus definition of "equity." For example, Black's Law Dictionary defines "equity" as "fairness; impartiality; evenhanded dealing," or "the body of principles constituting what is fair and right."

26. Without citing Black's Law Dictionary, do you believe there is a difference between "equity" and "equality?" If so, what is it?

Response: I am not aware of consensus definitions of these terms. Merriam-Webster Dictionary defines equity as "justice according to natural law or right; specifically: freedom from bias or favoritism" and defines equality as "the quality or state of being equal."

27. Does the 14th Amendment's equal protection clause guarantee "equity" as defined by the Biden Administration (listed above in question 25)?

Response: I am not aware of any Supreme Court or D.C. Circuit precedent that uses the definition of "equity" in Question 25. The Fourteenth Amendment's Equal Protection Clause states that, "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws."

28. Without citing Black's Law Dictionary, how do you define "systemic racism?"

Response: I am not aware of a consensus definition of the term "systemic racism," and I have never studied whether any institution is systemically racist. Merriam-Webster Dictionary defines systemic racism as "the oppression of a racial group to the advantage of another as perpetuated by inequity within interconnected systems (such as political, economic, and social systems)."

29. Without citing Black's Law Dictionary, how do you define "Critical Race Theory?"

Response: I am not aware of a consensus definition of "critical race theory," and I have never studied it. Oxford English Dictionary describes critical race theory as a "movement or theoretical approach within jurisprudence which holds that racial bias is inherent to the justice system as a result of its basis in beliefs and practices that benefit white people; (now also more generally) a theoretical framework for examining the influence of racial bias on social and cultural institutions and practices."

30. Do you distinguish "Critical Race Theory" from "systemic racism," and if so, how?

Response: Please see my responses to Questions 28 and 29.

31. The New York Times wrote about your departure from the firm Jones Day. In response to Jones Day's representation of the Pennsylvania GOP, you were quoted as saying, "[t]his lawsuit was brought for no other reason than to deprive poor people of the right to vote." In the nominations hearing last week, you told Senator Kennedy that "those were not [your] words." The New York Times has said they stand behind their reporting. Do you believe the Pennsylvania GOP's lawsuit was motivated, in full or in part, by a desire to restrict the right to vote for impoverished people? What specifically about this case led to your departure from your position as a partner at Jones Day?

Response: No. I stand by my testimony before the Committee. The quote in the New York Times article is inaccurate. I never communicated with the reporter listed in the byline or anyone in the media, directly or indirectly, about any internal discussions with my former law partners at Jones Day.

As I stated during my hearing, the lawsuit in question did not lead to my departure from Jones Day. I left the firm for a leadership position at the Department of Justice. Returning to public service is something I always intended to do at some point in my career. I discussed the opportunity with my then-law partners, and they supported my decision to return to the Justice Department.

32. You served on the Washington Lawyers Committee's Board of Directors from 2020 to 2021. During that time, Kaitlin Banner, Deputy Director of the Washington Lawyers Committee wrote a public comment on the Committee's letterhead. Her statement called for "police free schools," stating, in part, that "[s]chool police don't create real school safety." Do you agree with this comment from your former deputy director? Do you believe that all police should be removed from schools?

Response: I served on the Washington Lawyers Committee's Board of Directors for approximately one month between December 2020 and January 2021. During that time, I did not even attend a board meeting. I understand from a question from Ranking Member Graham that this statement was made in July 2020. I was not on the board in July 2020 when this statement was made, so I am not familiar with it, nor was I familiar with it prior to joining or at any point during my brief service on the board. I have never taken this position.

33. In June of 2020, the Washington Lawyers Committee testified before the D.C. State Board of Education and asserted the "need to address historic, unmitigated systemic racism . . . ." Do you agree that Washington D.C. schools practice "unmitigated systemic racism?"

Response: I served on the Washington Lawyers Committee's Board of Directors for approximately one month between December 2020 and January 2021. During that time, I did not even attend a board meeting. I was not on the board in June 2020 when this statement was made, so I am not familiar with it, nor was I familiar with it prior to joining or at any point during my brief service on the board. I have never taken this position.

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

Questions for the Record for Sparkle Leah Sooknanan, nominated to be United States District Judge for the District of Columbia

I. Directions

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

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

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

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

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

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

II. Questions

1. **Is racial discrimination wrong?**

   Response: Yes. Congress has enacted various statutes that prohibit racial discrimination in a variety of contexts. One example is the Civil Rights Act of 1964.

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

   Response: The Supreme Court's decision in *Washington v. Glucksberg* provides the relevant test. A federal court considering whether there are unenumerated rights in the Constitution must consider whether the claimed right was "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." 521 U.S. 702, 721 (1997). If confirmed, I would faithfully apply this test to any case raising the question, as well as any other relevant binding Supreme Court or D.C. Circuit precedent.

3. **How would you characterize your judicial philosophy? Identify which U.S. Supreme Court Justice's philosophy out of the Warren, Burger, Rehnquist, and Roberts Courts is most analogous with yours.**

   Response: The job of a district court judge is to listen to the parties, weigh the facts, and apply the law to those facts. My philosophy is that you should do all those things in a fair-minded way and follow the law and facts to the appropriate conclusion in every case. If confirmed, I would approach each case by setting aside any personal views or preconceptions I might have about how the case should be resolved and make a decision based on binding precedent and the record before me.

   Because the role of a district court judge is substantially different from that of a Supreme Court Justice, I would not characterize my judicial philosophy as being analogous to any of the Supreme Court Justices listed in the question. As a district court judge, my duty in every case would be to faithfully apply binding Supreme Court and D.C. Circuit precedent.

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

   Response: I understand originalism to refer to the interpretive method under which a court interprets and applies the Constitution based on the original public meaning of the Constitution's text. The Supreme Court has held that original public meaning governs the interpretation of constitutional provisions in various contexts. *See, e.g.*, *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022) (Second Amendment); *United States v. Jones*, 565 U.S. 400 (2012) (Fourth Amendment); *Crawford v. Washington*, 541 U.S. 36 (2004) (Sixth Amendment). If confirmed, I would faithfully apply all Supreme Court and D.C. Circuit precedent concerning the role of original public

meaning when interpreting constitutional provisions.

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

Response: Black's Law Dictionary defines "living constitutionalism" as the theory that the Constitution "should be interpreted and applied in accordance with changing circumstances and, in particular, with changes in social values." To my knowledge, no binding Supreme Court or D.C. Circuit precedent applies this interpretive method. If confirmed, I would faithfully apply all Supreme Court and D.C. Circuit precedent when interpreting constitutional provisions, and I would not apply interpretive methods that have not been utilized by the Supreme Court or D.C. Circuit.

6. **If you were to be presented with a constitutional issue of first impression— that is, an issue whose resolution is not controlled by binding precedent—and the original public meaning of the Constitution were clear and resolved the issue, would you be bound by that meaning?**

Response: As a federal district court judge, I would be bound by the frameworks used by the Supreme Court in considering constitutional issues of first impression. The Supreme Court has provided guidance for most constitutional provisions, and it has relied on the original public meaning of the Constitution in various contexts. *See, e.g.*, *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022) (Second Amendment); *United States v. Jones*, 565 U.S. 400 (2012) (Fourth Amendment); *Crawford v. Washington*, 541 U.S. 36 (2004) (Sixth Amendment). If confirmed, I would faithfully apply all Supreme Court and D.C. Circuit precedent concerning the role of original public meaning when interpreting constitutional provisions.

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

Response: The Supreme Court has provided guidance for most constitutional provisions, and it has relied on the original public meaning of the Constitution in various contexts. *See, e.g.*, *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022) (Second Amendment); *United States v. Jones*, 565 U.S. 400 (2012) (Fourth Amendment); *Crawford v. Washington*, 541 U.S. 36 (2004) (Sixth Amendment). The Supreme Court has considered contemporary understandings in certain other limited contexts. *See, e.g.*, *Miller v. California*, 413 U.S. 15 (1973) (regarding obscenity analysis). If confirmed, I would faithfully apply all Supreme Court and D.C. Circuit precedent.

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

Response: No. The Constitution is an enduring document that sets forth the principles

that govern our Nation. The factual scenarios and legal claims may change over time, but the principles brought to bear on those claims do not change. The Constitution can only be amended pursuant to the amendment process in Article V.

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

Response: Yes. The Supreme Court's decision in *Dobbs* is binding precedent. If confirmed, I would faithfully apply it.

a. **Was it correctly decided?**

Response: As a federal judicial nominee, the Code of Conduct for United States Judges precludes me from commenting on the correctness of a binding Supreme Court precedent, which I would faithfully apply as a judge.

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

Response: Yes. The Supreme Court's decision in *Bruen* is binding precedent. If confirmed, I would faithfully apply it.

a. **Was it correctly decided?**

Response: As a federal judicial nominee, the Code of Conduct for United States Judges precludes me from commenting on the correctness of a binding Supreme Court precedent, which I would faithfully apply as a judge.

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

Response: Yes. The Supreme Court's decision in *Brown* is binding precedent. If confirmed, I would faithfully apply it.

a. **Was it correctly decided?**

Response: As a federal judicial nominee, the Code of Conduct for United States Judges precludes me from commenting on the correctness of a binding Supreme Court precedent, which I would faithfully apply as a judge. But consistent with the practice of prior judicial nominees, I can state that *Brown v. Board of Education* was correctly decided because it falls within a small category of cases that present issues unlikely to ever come before me.

12. **Is the Supreme Court's ruling in *Students for Fair Admissions v. Harvard* settled law?**

Response: Yes. The Supreme Court's decision in *Students for Fair Admissions* is

binding precedent. If confirmed, I would faithfully apply it.

a. **Was it correctly decided?**

Response: As a federal judicial nominee, the Code of Conduct for United States Judges precludes me from commenting on the correctness of a binding Supreme Court precedent, which I would faithfully apply as a judge.

13. **Is the Supreme Court's ruling in *Gibbons v. Ogden* settled law?**

Response: Yes. The Supreme Court's decision in *Gibbons* is binding precedent. If confirmed, I would faithfully apply it.

a. **Was it correctly decided?**

Response: As a federal judicial nominee, the Code of Conduct for United States Judges precludes me from commenting on the correctness of a binding Supreme Court precedent, which I would faithfully apply as a judge.

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

Response: Under the Bail Reform Act of 1984, there is a presumption in favor of pretrial detention for offenses enumerated in 18 U.S.C. § 3142(e). They include certain drug offenses carrying a sentence of ten years or more, certain specified terrorism offenses, certain crimes involving minors as victims, and others.

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

Response: I am not aware of any Supreme Court or D.C. Circuit precedent addressing the policy rationales underlying the presumption specified in the Bail Reform Act of 1984. If confirmed, I would apply the laws as written.

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

Response: Yes, there are both constitutional and statutory limits. For example, under the Free Exercise Clause in the First Amendment, laws that burden the free exercise of religion are subject to strict scrutiny unless they are neutral and generally applicable. *Empl. Div., Dep't of Hum. Res. of Ore. v. Smith*, 494 U.S. 872 (1990). To survive that high standard, the challenged law "must advance interests of the highest order and must be narrowly tailored in pursuit of those interests." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993); *see also Tandon v. Newsom*, 141 S. Ct. 1294, 1296-97 (2021) (per curiam).

The Religious Freedom Restoration Act of 1993 (RFRA) is an example of a statutory limit. The Supreme Court has held that RFRA covers both religious organizations and small businesses operated by observant owners. *See, e.g.*, *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014). Under RFRA, if any federal law places a substantial burden on a person's exercise of religion, the government must show that the burden "(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000bb-1.

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

Response: The Supreme Court has held that laws that discriminate on the basis of religion are subject to strict scrutiny under the First Amendment. Such laws "must be justified by a compelling governmental interest and must be narrowly tailored to advance that interest." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531-32 (1993).

17. **In *Roman Catholic Diocese of Brooklyn v. Cuomo*, the Roman Catholic Diocese of Brooklyn and two Orthodox Jewish synagogues sued to block enforcement of an executive order restricting capacity at worship services within certain zones, while certain secular businesses were permitted to remain open and subjected to different restrictions in those same zones. The religious organizations claimed that this order violated their First Amendment right to free exercise of religion. Explain the U.S. Supreme Court's holding on whether the religious entity-applicants were entitled to a preliminary injunction.**

Response: In *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63 (2020), the Supreme Court granted the religious organizations' application for injunctive relief and enjoined enforcement of the executive order pending disposition of the appeal and any petition for a writ of certiorari. First, the Court determined that the executive order should be reviewed under strict scrutiny because the religious organizations had made a "strong showing" that the order was not neutral towards religion. *Id.* at 66. Second, applying strict scrutiny, the Court held that the order was not "narrowly tailored." *Id.* at 67. Third, turning to the balance of the equities, the Court held that the order would cause irreparable harm and it had "not been shown" that the public would be harmed by a preliminary injunction. *Id.* at 68.

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

Response: In *Tandon v. Newsom*, 141 S. Ct. 1294 (2021), a challenge to California's restrictions on private gatherings during the COVID-19 pandemic, the Supreme Court held that the plaintiffs were entitled to injunctive relief pending disposition of the appeal and any petition for a writ of certiorari. The Court explained that where a regulation treats comparable religious activity less favorably than secular activity, it

fails strict scrutiny unless the government can "show that the religious exercise at issue is more dangerous than [secular] activities even when the same precautions are applied." *Id.* at 1297. The Court reasoned that "[t]he State cannot assume the worst when people go to worship but assume the best when people go to work." *Id.*

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

Response: Yes. *See, e.g.*, *Kennedy v. Bremerton*, 142 S. Ct. 2407 (2022).

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

Response: In *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2018), a baker told a same-sex couple that he would not create a cake for their wedding celebration because of his religious opposition to same-sex marriages. After the couple filed a charge with the Colorado Civil Rights Commission, the Commission concluded that Colorado's anti-discrimination law required the baker to design and create the cake for the same-sex couple. The Supreme Court held that the Colorado Civil Rights Commission violated the First Amendment's Free Exercise Clause because the Commission had not applied the state's anti-discrimination law in a "neutral and respectful" manner towards religion and instead had showed "clear and impermissible hostility" towards the baker's sincere religious beliefs.

21. **Under existing doctrine, are an individual's religious beliefs protected if they are contrary to the teaching of the faith tradition to which they belong?**

Response: Yes. The Supreme Court has held that an individual's religious beliefs are protected even if they are contrary to the teaching of the faith tradition to which they belong. As long as an individual's religious beliefs are sincere, they are protected under the Constitution. *See, e.g.*, *Frazee v. Ill. Dep't of Emp. Sec.*, 489 U.S. 829, 834 (1989); *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 720 (2014).

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

Response: Please see my response to Question 21.

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

Response: Please see my response to Question 21.

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

Response: As a federal judicial nominee, I am precluded from commenting on the official position of a religious institution.

22. **In *Our Lady of Guadalupe School v. Morrissey-Berru*, the U.S. Supreme Court reversed the Ninth Circuit and held that the First Amendment's Religion Clauses foreclose the adjudication of employment-discrimination claims for the Catholic school teachers in the case. Explain your understanding of the Court's holding and reasoning in the case.**

Response: In *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049 (2020), a case involving the scope of the "ministerial exception," the Supreme Court addressed whether two elementary school teachers at Catholic schools could bring claims alleging that the schools discriminated against them when the schools terminated their employment. The ministerial exception, recognized by the Supreme Court in *Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission*, 565 U.S. 171 (2012), prohibits courts from intervening in employment disputes between religious institutions and certain employees. The doctrine is grounded in the First Amendment right of religious institutions "to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." 140 S. Ct. at 2055. The Supreme Court held that the elementary school teachers were covered by the ministerial exception because they performed "vital religious duties." *Id.* at 2066. The Court reasoned that as "teachers responsible for providing instruction in all subjects, including religion, they were the members of the school staff who were entrusted most directly with the responsibility of educating their students in the faith." *Id.*

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

Response: In *Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2020), the Supreme Court considered Philadelphia's refusal to contract with a Catholic organization to provide foster care because the organization did not work with same-sex couples as potential foster parents. Philadelphia relied on an anti-discrimination policy as its justification. The Supreme Court held that Philadelphia's policy was not neutral and generally applicable because it included a provision allowing for discretionary, individualized exemptions. Applying strict scrutiny, the Court concluded that Philadelphia could not show that its refusal to contract with the organization was narrowly tailored to advancing a compelling governmental interest. Thus, the Court found that Philadelphia's actions violated the organization's rights under the Free Exercise Clause.

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

Court's holding and reasoning in the case.

Response: In *Carson v. Makin*, 142 S. Ct. 1987 (2022), the Supreme Court considered the constitutionality of a Maine tuition program that provided subsidy vouchers for private schools in certain circumstances but barred religious schools from participation. The Court held that the program violated the Free Exercise Clause. It reasoned that the Free Exercise Clause prohibits states from excluding "religious observers from otherwise available public benefits," and concluded that Maine's program could not satisfy strict scrutiny. *Id.* at 1996.

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

Response: In *Kennedy v. Bremerton School District*, 142 S. Ct. 2407 (2022), the Supreme Court held that the dismissal of a high school football coach based on the coach's practice of offering a quiet prayer at the 50-yard line after games violated the Free Exercise and Free Speech Clauses of the First Amendment. The Court found that the school district's actions were subject to strict scrutiny because they were neither neutral nor generally applicable. Applying strict scrutiny, the Court held that the school district had failed to demonstrate that its actions were narrowly tailored to achieve a compelling government interest: "The only meaningful justification the government offered for its reprisal rested on a mistaken view that it had a duty to ferret out and suppress religious observances even as it allows comparable secular speech." *Id.* at 2432-2433.

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

Response: In *Mast v. Fillmore County*, 141 S. Ct. 2430 (2021), the Supreme Court vacated a state court decision in light of its decision in *Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2021). Justice Gorsuch wrote separately to explain that the lower court had not properly applied strict scrutiny under the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc(a). *See Mast*, 141 S. Ct. at 2432-34 (Gorsuch, J., concurring). He explained that the "courts below erred by treating the County's general interest in sanitation regulations as 'compelling' without reference to the specific application of those rules to this community." *Id.* at 2422. Justice Gorsuch also explained that the state court had not given "due weight to exemptions other groups enjoy" but which had been denied to the religious group at issue. *Id.*

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

Response: 18 U.S.C. § 1507 provides: "Whoever, with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty, pickets or parades in or near a building housing a court of the United States, or in or near a building or residence occupied or used by such judge, juror, witness, or court officer, or with such intent uses any sound-truck or similar device or resorts to any other demonstration in or near any such building or residence, shall be fined under this title or imprisoned not more than one year, or both." To my knowledge, neither the Supreme Court nor D.C. Circuit has interpreted this statute in the context of protests in front of the homes of U.S. Supreme Court Justices following the *Dobbs* leak. I am aware of other Supreme Court precedent upholding a state statute "modeled after" 18 U.S.C. § 1507. *See Cox v. Louisiana*, 379 U.S. 559 (1965). I am also aware that the D.C. Circuit has upheld the constitutionality of 40 U.S.C. § 6135, a federal statute that makes it unlawful to "parade, stand, or move in processions or assemblages in the Supreme Court Building or grounds." *Hodge v. Talkin*, 799 F.3d 1145, 1149 (D.C. Cir. 2015). If confirmed, I would address such a case based on binding Supreme Court and D.C. Circuit precedent and the record in the case. As a federal judicial nominee, the Code of Conduct for United States Judges precludes me from commenting on an issue that might come before the courts.

28. **Would it be appropriate for the court to provide its employees trainings which include the following:**

    a. **One race or sex is inherently superior to another race or sex;**

       Response: No.

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

       Response: No.

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

       Response: No.

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

       Response: No.

29. **Will you commit that your court, so far as you have a say, will not provide trainings that teach that meritocracy, or related values such as work ethic and self-reliance, are racist or sexist?**

    Response: Yes.

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

Response: Yes.

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

Response: I am not aware of any Supreme Court or D.C. Circuit precedent addressing the factors that may be considered in making political appointments under the Constitution. If confirmed and such a case were to come before me, I would resolve the case based on the applicable law and record before me.

32. **If a program or policy has a racially disparate outcome, is this evidence of either purposeful or subconscious racial discrimination?**

Response: The Supreme Court has held, for example, that evidence of a program or policy that has a racially disparate outcome can constitute evidence of illegal discrimination in certain circumstances under Title VII. *See Ricci v. DeStefano*, 129 S. Ct. 2658, 2672-73 (2009) ("Title VII prohibits both intentional discrimination (known as 'disparate treatment') as well as, in some cases, practices that are not intended to discriminate but in fact have a disproportionately adverse effect on minorities (known as 'disparate impact')."). If confirmed, I would faithfully apply binding Supreme Court and D.C. Circuit precedent to any case involving a claim of racially disparate impact.

33. **Do you believe that Congress should increase, or decrease, the number of justices on the U.S. Supreme Court? Please explain.**

Response: As a federal judicial nominee, the Code of Conduct for United States Judges precludes me from commenting on the appropriate number of justices on the Supreme Court. If confirmed, I would faithfully apply the decisions of the Supreme Court, and the number of Justices sitting on that Court would have no bearing on that work.

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

Response: No.

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

Response: The Supreme Court has addressed the original public meaning of the Second Amendment in *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *New York Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111 (2022). Most recently, in *Bruen*, the Court stated that, based on its interpretation of the Second Amendment's text and

original public meaning, the Amendment protects "the right of an ordinary, law-abiding citizen to possess a handgun in the home for self-defense" and "to carry a handgun for self-defense outside the home." *Id.* at 2122.

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

Response: In *New York Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111 (2022), the Supreme Court set out the appropriate test. "In keeping with *Heller*," the Court held that "when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.'" *Id.* at 2126 (quoting *Konigsberg v. State Bar of Cal.*, 366 U.S. 36, 50 n.10 (1961)).

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

Response: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court held that the Constitution protects an individual right to keep and bear arms.

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

Response: No. In *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022), the Supreme Court explained that the Second Amendment "standard accords with how we protect other constitutional rights." *Id.* at 2130.

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

Response: No. In *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022), the Supreme Court explained that the Second Amendment "standard accords with how we protect other constitutional rights." *Id.* at 2130.

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

Response: The Constitution states that the President "shall take Care that the Laws be faithfully executed," U.S. Const. art. II, § 3, and the Supreme Court has held that the Executive Branch generally has "absolute discretion" to decide whether to initiate civil or criminal enforcement proceedings, *Heckler v. Chaney*, 470 U.S. 821, 831 (1985). If confirmed, I would faithfully apply binding precedent from the Supreme Court and the

D.C. Circuit to resolve any case before me concerning this issue.

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

Response: Black's Law Dictionary defines "prosecutorial discretion" as a "prosecutor's power to choose from the options available in a criminal case, such as filing charges, prosecuting, not prosecuting, plea-bargaining, and recommending a sentence to the court." It defines "administrative rule" as "[a]n officially promulgated agency regulation that has the force of law."

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

Response: No. Under federal law, the death penalty is authorized by statute, and the President cannot unilaterally change statutes. The President also has no authority to abolish state laws authorizing the death penalty.

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

Response: In *Alabama Association of Realtors v. Department of Health and Human Services*, 141 S. Ct. 2485 (2021), the Supreme Court considered a nationwide eviction moratorium imposed by the Centers for Disease Control and Prevention (CDC). A district court had vacated the moratorium but stayed its judgment pending the government's appeal. The Supreme Court vacated that stay. The Court explained that the applicants were "virtually certain to succeed on the merits of their argument that the CDC [had] exceeded its authority" and that the "equities do not justify depriving the applicants of the District Court's judgment in their favor." *Id.* at 2489.

44. **Is it appropriate for a prosecutor to publicly announce that they are going to prosecute a member of the community before they even start an investigation as to that person's conduct?**

Response: As a federal judicial nominee, the Code of Conduct for United States Judges precludes me from commenting on the appropriateness of actions of a prosecutor, as this hypothetical could mirror a question that may come before me if confirmed.

Senator Josh Hawley
Questions for the Record

Sparkle Sooknanan
Nominee, U.S. District Judge for the District of Columbia

1. **During your nominations hearing, I asked if you were lead counsel on a case in which Jones Day represented hedge funds invested in bonds issued by Puerto Rico. You responded in the negative. In the press release from Jones Day linked below, you are identified as "leading the team representing a group of investors in bonds issued by Puerto Rico's pension system." Was your testimony to the committee false?**

    a. **Press Release: https://www.mondaq.com/pressrelease/58894/three-jones-day-partners-named-2020-dc-rising-stars-by-national-law-journal**

    Response: No, my testimony was not false. I was not lead counsel for Jones Day's representation of clients in Puerto Rico's debt litigation, which spanned several years and involved various streams of litigation. I was first assigned to the matter as an associate, and for most of the time I worked on the matter, I was an associate being supervised by several partners. After being admitted to Jones Day's partnership in 2020, I worked on the matter as a partner for approximately six months before leaving the firm, and during that time I was the most junior partner assigned to the matter being supervised by several more senior partners. Throughout the representation, a senior partner at Jones Day served as lead counsel, meaning that he set the direction of the litigation, approved filings and significant decisions, and managed the client relationships. Although I led aspects of certain workstreams and appeared as counsel in certain matters, at all times I was working under the direction of several partners, including the senior partner serving as lead counsel.

2. **Additionally, you are listed as counsel of record for Andalusian Global Designated Activity Company, et al. in the Supreme Court case of *Financial Oversight and Management Board for Puerto Rico, Petitioner v. Andalusian Global Designated Activity Company, et al.* How is this consistent with your testimony that you were not lead counsel in this case?**

    Response: I was not lead counsel for Jones Day's representation of clients in Puerto Rico's debt litigation, which spanned several years and involved various streams of litigation. I was first assigned to the matter as an associate, and for most of the time I worked on the matter, I was an associate being supervised by several partners. After being admitted to Jones Day's partnership, I worked on the matter as a partner for approximately six months before leaving the firm, and during that time I was the most junior partner assigned to the matter being supervised by several more senior partners. Throughout the representation, a senior partner at Jones Day served as lead counsel, meaning that he set the direction of the litigation, approved filings and significant

decisions, and managed the client relationships. Although I led aspects of certain workstreams and appeared as counsel in certain matters, at all times I was working under the direction of several partners, including the senior partner serving as lead counsel.

3. **Have you ever worked on a legal case or representation in which you opposed a party's religious liberty claim?**
   a. **If so, please describe the nature of the representation and the extent of your involvement. Please also include citations or reference to the cases, as appropriate.**

      Response: No.

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

   Response: The Supreme Court has held that original public meaning governs the interpretation of constitutional provisions in various contexts. *See, e.g.*, *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022) (Second Amendment); *United States v. Jones*, 565 U.S. 400 (2012) (Fourth Amendment); *Crawford v. Washington*, 541 U.S. 36 (2004) (Sixth Amendment). If confirmed, I would faithfully apply all Supreme Court and D.C. Circuit precedent concerning the role of original public meaning when interpreting constitutional provisions.

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

   Response: The first step when interpreting any statute is to determine whether there is binding precedent governing the issue presented in the case. In the absence of such precedent, I would look to the statute's text, and if that text had a clear meaning, that meaning would resolve the case. If the text is unclear, the Supreme Court has stated that other indications of legislative intent, including the structure of the statute, other canons of interpretation, and appropriate forms of legislative history may be considered in resolving the ambiguity. *See, e.g.*, *County of Maui v. Hawaii Wildlife Fund*, 140 S. Ct. 1462, 1471 (2020). In all cases, I would heed the Supreme Court's instruction that "the authoritative statement is the statutory text, not the legislative history or any other extrinsic material," and "[e]xtrinsic materials have a role in statutory interpretation only to the extent they shed a reliable light on the enacting Legislature's understanding of otherwise ambiguous terms." *Exxon Mobil Corp. v. Allapattah Servs.*, 545 U.S. 546, 568 (2005).

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

      Response: The Supreme Court has stated that certain types of legislative history are more authoritative than others. For example, the Court has explained that committee reports are generally more probative of legislative intent than, for

example, "passing comments of one Member" or "casual statements from the floor debates." *Garcia v. United States*, 469 U.S. 70, 76 (1984).

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

Response: The United States Constitution is a domestic document and should be interpreted according to domestic law and authorities. If confirmed, I would look to Supreme Court and D.C. Circuit precedent in interpreting the Constitution.

6. Under the precedents of the Supreme Court and U.S. Court of Appeals for the Circuit to which you have been nominated, what is the legal standard that applies to a claim that an execution protocol violates the Eighth Amendment's prohibition on cruel and unusual punishment?

Response: The Supreme Court has held that a petitioner challenging an execution protocol under the Eighth Amendment's prohibition on cruel and unusual punishment must (1) establish that the particular method of execution presents a "substantial risk of serious harm," and (2) "identify an alternative [method] that is feasible, readily implemented, and in fact significantly reduce[s] the risk of harm involved." *Nance v. Ward*, 142 S. Ct. 2214, 2220 (2022) (quoting *Glossip v. Gross*, 576 U.S. 863, 877 (2015)) (alterations in original).

7. Under the Supreme Court's holding in *Glossip v. Gross*, 135 S. Ct. 824 (2015), is a petitioner required to establish the availability of a "known and available alternative method" that has a lower risk of pain in order to succeed on a claim against an execution protocol under the Eighth Amendment?

Response: Yes.

8. Has the Supreme Court or the U.S. Court of Appeals for the Circuit to which you have been nominated ever recognized a constitutional right to DNA analysis for habeas corpus petitioners in order to prove their innocence of their convicted crime?

Response: No.

9. Do you have any doubt about your ability to consider cases in which the government seeks the death penalty, or habeas corpus petitions for relief from a sentence of death, fairly and objectively?

Response: No.

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

facially neutral state governmental action is a substantial burden on the free exercise of religion? Please cite any cases you believe would be binding precedent.

Response: The Supreme Court has long held that neutral and generally applicable state laws that burden religious exercise are subject to rational basis review, but that strict scrutiny applies if the law or policy at issue is not in fact neutral and generally applicable. *See Church of the Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 531 (1993). The Court has issued several decisions that provide guidance on how to conduct this analysis. For example, the Court has held that a law is not neutral and generally applicable if it treats any "comparable secular activity more favorably than religious exercise." *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021). The Court has also held that a law is not neutral and generally applicable if it is subject to discretionary individualized exemptions. *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1878 (2021).

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

Response: Please see my response to Question 10.

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

Response: The Supreme Court has held that as long as an individual's religious beliefs are sincere, they are protected under the Constitution. *See, e.g.*, *Frazee v. Ill. Dep't of Emp. Sec.*, 489 U.S. 829, 834 (1989); *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 720 (2014). Further, a court's only function "in this context is to determine" whether the person's religious belief reflects "an honest conviction"; courts may not assess whether the person's religious beliefs "are flawed." *Burwell*, 573 U.S. at 724-25.

13. **The Second Amendment provides that, "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."**
    a. **What is your understanding of the Supreme Court's holding in *District of Columbia v. Heller*, 554 U.S. 570 (2008)?**

    Response: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court held that the Second Amendment protects an individual right to keep and bear arms for self-defense 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.**

Response: No.

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

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

Response: I believe that Justice Holmes was referring to the view expressed in his dissent that the Constitution is "not intended to embody a particular economic theory." *Lochner v. New York*, 198 U.S. 45, 75 (1905).

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

Response: *Lochner v. New York* is no longer binding precedent because it was rejected in *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937).

15. In *Trump v. Hawaii*, the Supreme Court overruled *Korematsu v. United States*, 323 U.S. 214 (1944), saying that the decision—which had not been followed in over 50 years—had "been overruled in the court of history." 138 S. Ct. 2392, 2423 (2018). What is your understanding of that phrase?

Response: I believe the Supreme Court was stating that *Korematsu v. United States* was incorrectly decided.

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

a. If so, what are they?

Response: In *Trump v. Hawaii*, 138 S. Ct. 2392, 2423 (2018), the Supreme Court said the following about its decision in *Korematsu v. United States*, 323 U.S. 214 (1944): "*Korematsu* was gravely wrong the day it was decided, has been overruled in the court of history, and—to be clear—has no place in law under the Constitution."

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

Response: Yes.

17. Judge Learned Hand famously said 90% of market share "is enough to constitute a monopoly; it is doubtful whether sixty or sixty-four percent would be enough; and certainly thirty-three per cent is not." *United States v. Aluminum Co. of America*, 148 F.2d 416, 424 (2d Cir. 1945).

a. Do you agree with Judge Learned Hand?

Response: If confirmed, I would follow all Supreme Court and D.C. Circuit precedent as to what constitutes a monopoly. Any personal views I might have on any issue would have no impact on my approach to judging.

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

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

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

Response: In *Eastman Kodak Co. v. Image Tech. Servs., Inc.*, 504 U.S. 451 (1992), the Supreme Court held that showing control of 80% to 95% of a particular market where there are no "readily available substitutes" is sufficient to survive summary judgment under § 2 of the Sherman Act. *Id.* at 481. There, the Court cited *American Tobacco Co. v. United States*, 328 U.S. 781, 797 (1946), and described it as holding that "over two-thirds of the market is a monopoly." *Eastman Kodak Co.*, 504 U.S. at 481.

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

Response: In *Erie v. Tompkins*, 304 U.S. 64 (1938), the Supreme Court held that there is "no federal general common law." *Id.* at 78. The Court has said that federal common law exists instead only in certain "limited enclaves in which federal courts may derive some substantive law in a common law way," such as in admiralty disputes. *Sosa v. Alvarez-Machain*, 542 U.S. 692, 729 (2004).

19. If a state constitution contains a provision protecting a civil right and is phrased identically with a provision in the federal constitution, how would you determine the scope of the state constitutional right?

Response: The Supreme Court has explained that when federal courts are required to decide a question of state law, they should defer to the decision of the highest court of the relevant state. *See, e.g.*, *Wainwright v. Goode*, 464 U.S. 78, 84 (1983). If confirmed, I would look to decisions of a state's highest court in resolving questions of state law.

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

Response: With respect to text in the federal constitution, I would follow applicable Supreme Court and D.C. Circuit precedent. With respect to text in a state constitution, I would follow decisions of the relevant state's highest court.

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

Response: Yes. States are bound by federal constitutional provisions, but a State may provide for more protections in their state constitution and laws than provided in the federal constitution. *See, e.g.*, *Pruneyard Shopping Ctr. v. Robins*, 447 U.S. 74, 81 (1980) (recognizing "the authority of the State to exercise its police power or its sovereign right to adopt in its own Constitution individual liberties more expansive than those conferred by the Federal Constitution").

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

Response: As a federal judicial nominee, the Code of Conduct for United States Judges precludes me from commenting on the correctness of a binding Supreme Court precedent, which I would faithfully apply as a judge. But consistent with the practice of prior judicial nominees, I can state that *Brown v. Board of Education* was correctly decided because it falls within a small category of cases that present issues unlikely to ever come before me.

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

Response: In issuing nationwide injunctions, district courts have relied on Federal Rule of Civil Procedure 65, which governs the issuance of injunctions generally. Whether it is appropriate for a district judge to issue a nationwide injunction is the subject of active litigation, *see, e.g.*, *Arizona v. Biden*, 31 F.4th 469, 483-85 (6th Cir. 2022) (Sutton, C.J., concurring) (questioning the legal authority for such injunctions), but the Supreme Court has said that "[a]n injunction is a drastic and extraordinary remedy, which should not be granted as a matter of course," *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165 (2010). If confirmed, I would faithfully apply all Supreme Court and D.C. Circuit precedent to any request for injunctive relief.

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

Response: Please see my response to Question 21.

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

Response: Please see my response to Question 21.

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

Response: Please see my response to Question 21.

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

Response: As the Supreme Court has explained, federalism is a "check on abuses of government power." *Gregory v. Ashcroft*, 501 U.S. 452, 458 (1991). Federalism "assures a decentralized government that will be more sensitive to the diverse needs of a heterogenous society; it increases opportunity for citizen involvement in democratic processes; it allows for more innovation and experimentation in government; and it makes government more responsive by putting the States in competition for a mobile citizenry." *Id.*

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

Response: There are several abstention doctrines.

Under the *Pullman* abstention doctrine, when a state law is challenged in federal court as unconstitutional, the federal court generally should abstain when "difficult and unsettled questions of state law" must be first resolved and would be dispositive of the case, obviating the need for the federal court to resolve the constitutional question. *See Haw. Housing Auth. v. Midkiff*, 467 U.S. 229, 236 (1984) (citing *R.R. Comm'n of Tex. v. Pullman Co.*, 312 U.S. 496, 498–501 (1941)); *see also JMM Corp. v. District of Columbia*, 378 F.3d 1117, 1124 (D.C. Cir. 2004) ("[W]hen a federal constitutional claim is premised on an unsettled question of state law, the federal court should stay its hand in order to provide the state courts an opportunity to settle the underlying state-law question and thus avoid the possibility of unnecessarily deciding a constitutional question.").

Under the *Younger* abstention doctrine, federal courts should abstain from enjoining certain kinds of ongoing state proceedings. *Younger v. Harris*, 401 U.S. 37 (1971). *Younger* applies when (1) "there are ongoing state proceedings that are judicial in nature," (2) "the state proceedings … implicate important state interests," and (3) "the proceedings … afford an adequate opportunity in which to raise the federal claims." *Eisenberg v. W Va. Office of Disciplinary Counsel*, 856 F. App'x 314, 315 (D.C. Cir. 2021) (quoting *Hoai v. Sun Ref. & Mktg. Co.*, 866 F.2d 1515, 1518-19 (D.C. Cir. 1989).

Under the *Burford* abstention doctrine, abstention is "appropriate where there have been presented 'difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result in the case then at bar.'" *Silverman v. Barry*, 727 F.2d 1121, 1123 n.4 (D.C. Cir. 1984) (*quoting Colorado River Water Conservation District v. United States*, 424 U.S. 800, 814-15 (1976)).

Under the *Colorado River* abstention doctrine, federal courts may dismiss or stay a federal case in deference to a pending parallel state court proceeding if doing so would further concerns of "wise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation." *Colorado River Water*

Conservation Dist. v. United States, 424 U.S. 800, 813, 817 (1976). The Supreme Court and D.C. Circuit have identified factors to balance under this doctrine, including "which court first assumed jurisdiction over property involved in the case; the inconvenience of the federal forum; the desirability of avoiding piecemeal litigation; and the order in which jurisdiction was obtained by the concurrent forums." *Sheptock v. Fenty*, 707 F.3d 326, 332 (D.C. Cir. 2013).

Under the *Rooker-Feldman* abstention doctrine, lower federal courts are precluded from hearing "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280, 284 (2005).

Under the *Thibodaux* abstention doctrine, a federal court hearing a case within its diversity jurisdiction may choose to abstain from deciding issues of state law that are "intimately involved with sovereign prerogative." *Louisiana Power & Light Co. v. City of Thibodaux*, 360 U.S. 25, 28 (1959). 360 U.S. 25, 28.

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

Response: Whether damages or injunctive relief are appropriate in any particular case would depend on the facts of that case. The Supreme Court has made clear that injunctions are an "extraordinary remedy" appropriate when legal remedies would be inadequate. *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982).

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

Response: The Supreme Court has held that the Constitution—through the Due Process Clauses of the Fifth and Fourteenth Amendments—protects rights that are not expressly enumerated in the Constitution. The Court has described these rights as rights that are "deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty." *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997). They include, among others, the right to marry, *Loving v. Virginia*, 388 U.S. 1 (1967), the right to have children, *Skinner v. Oklahoma*, 316 U.S. 535 (1942), and the right to direct the education and upbringing of one's children, *Meyer v. Nebraska*, 262 U.S. 390 (1923); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925).

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

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

Response: Please see my response to Question 10.

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

Response: The Supreme Court has described the First Amendment's Free Exercise Clause as protecting both "freedom of worship" and "freedom of conscience." *Lee v. Weisman*, 505 U.S. 577, 591 (1992).

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

Response: Please see my response to Question 10.

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

Response: Please see my response to Question 12.

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

Response: Under the Religious Freedom Restoration Act (RFRA), if any federal law places a substantial burden on a person's exercise of religion, the government must establish that the burden "(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000bb-1; *see City of Boerne v. Flores*, 521 U.S. 507 (1997). The Supreme Court has held that RFRA "displac[es] the operation of other federal laws," such as those governing areas like employment and education. *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1754 (2020).

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

Response: No.

28. Under American law, a criminal defendant cannot be convicted unless found to be guilty "beyond a reasonable doubt." On a scale of 0% to 100%, what is your understanding of the confidence threshold necessary for you to say that you believe something "beyond a reasonable doubt." Please provide a numerical answer.

Response: There has been litigation regarding jury instructions that elaborate on the meaning of reasonable doubt in this respect. *See, e.g.*, *United States v. Hall*, 854 F.2d 1036, 1044-45 (7th Cir. 1988) (Posner, J., concurring) (explaining why "[n]umerical estimates of probability… are not likely to be helpful in the setting of jury deliberations"). If confirmed, I would instruct juries in criminal cases in accordance with any applicable Supreme Court or D.C. Circuit precedent.

29. The Supreme Court has held that a state prisoner may only show that a state decision applied federal law erroneously for the purposes of obtaining a writ of habeas corpus under 28 U.S.C. § 2254(d) if "there is no possibility fairminded jurists could disagree that the state court's decision conflicts with th[e Supreme] Court's precedents." *Harrington v. Richter*, 562 U.S. 86, 102 (2011).

a. Do you agree that if there is a circuit split on the underlying issue of federal law, that by definition "fairminded jurists could disagree that the state court's decision conflicts with the Supreme Court's precedents"?

b. In light of the importance of federalism, do you agree that if a state court has issued an opinion on the underlying question of federal law, that by definition "fairminded jurists could disagree that the state court's decision conflicts if the Supreme Court's precedents"?

c. If you disagree with either of these statements, please explain why and provide examples.

Response: In *Harrington v. Richter*, the Supreme Court did not define "fairminded jurist" or provide guidance on what constitutes a disagreement among fairminded jurists, including whether a circuit spilt or a split between state and federal courts constitutes a disagreement among fairminded jurists. As a federal judicial nominee, the Code of Conduct for United States Judges precludes me from commenting on an issue that might come before the courts.

30. U.S. Courts of Appeals sometimes issue "unpublished" decisions and suggest that these decisions are not precedential. *Cf.* Rule 32.1 for the U.S. Court of Appeals for the Tenth Circuit.

a. Do you believe it is appropriate for courts to issue "unpublished" decisions?

b. If yes, please explain if and how you believe this practice is consistent with the rule of law.

c. If confirmed, would you treat unpublished decisions as precedential?

d. If not, how is this consistent with the rule of law?

e. If confirmed, would you consider unpublished decisions cited by litigants when hearing cases?

f. Would you take steps to discourage any litigants from citing unpublished opinions? *Cf.* Rule 32.1A for the U.S. Court of Appeals for the Eighth Circuit.

g. Would you prohibit litigants from citing unpublished opinions? *Cf.* Rule 32.1 for the U.S. Court of Appeals for the District of Columbia.

Response: The D.C. Circuit permits unpublished opinions and permits their citation in certain scenarios. D.C. Circuit Rule 32.1(b). But "a panel's decision to issue an unpublished disposition means that the panel sees no precedential value in that disposition." D.C. Circuit Rule 36(e)(2). If confirmed, I will follow the D.C. Circuit's rules and other precedent on the topic of unpublished opinions.

31. In your legal career:

a. How many cases have you tried as first chair?

Response: As a former partner at a major law firm, I have extensive district court litigation experience, from complaint drafting to discovery to motion practice to pretrial proceedings. My litigation matters resolved before trial, which is typical, particularly in private practice.

b. How many have you tried as second chair?

Response: As a former partner at a major law firm, I have extensive district court litigation experience, from complaint drafting to discovery to motion practice to pretrial proceedings. My litigation matters resolved before trial, which is typical, particularly in private practice.

c. How many depositions have you taken?

Response: I have second-chaired depositions and worked with experts and other witnesses preparing for depositions.

d. How many depositions have you defended?

Response: I estimate between five and ten.

e. How many cases have you argued before a federal appellate court?

Response: Four.

f. How many cases have you argued before a state appellate court?

Response: None.

g. How many times have you appeared before a federal agency, and in what capacity?

Response: None.

h. How many dispositive motions have you argued before trial courts?

Response: Three.

i. **How many evidentiary motions have you argued before trial courts?**

Response: I estimate between five and ten.

32. If any of your previous jobs required you to track billable hours:

a. **What is the maximum number of hours that you billed in a single year?**

Response: Approximately 2,100 hours.

b. **What portion of these were dedicated to pro bono work?**

Response: During my time in private practice, I devoted more than 3,000 hours to pro bono matters, which represented 34% of my overall client hours.

33. Justice Scalia said, "The judge who always likes the result he reaches is a bad judge."

a. **What do you understand this statement to mean?**

Response: I believe it means that judges should decide cases based on the law and not based on personal desires for a specific outcome.

34. Chief Justice Roberts said, "Judges are like umpires. Umpires don't make the rules, they apply them."

a. **What do you understand this statement to mean?**
b. **Do you agree or disagree with this statement?**

Response: I believe that Chief Justice Roberts was explaining that the job of a judge is to fairly and impartially apply the laws duly enacted by the legislative branch. I agree with the statement.

35. When encouraged to "do justice," Justice Holmes is said to have replied, "That is not my job. It is my job to apply the law."

a. **What do you think Justice Holmes meant by this?**
b. **Do you agree or disagree with Justice Holmes? Please explain.**

Response: I believe that Justice Holmes was explaining that a judge's role is to faithfully apply the relevant law to the facts of each case. I agree that a judge should decide each case by fairly and impartially applying the law to the facts.

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

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

Response: To the best of my recollection, I have not argued that a federal or state statute is unconstitutional, but I have made constitutional avoidance arguments with respect to federal and state statutes.

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

Response: No.

38. What were the last three books you read?

Response: (1) King: A Life by Jonathan Eig, (2) Black Cake by Charmaine Wilkerson, (3) Harry Potter and the Sorcerer's Stone by J. K. Rowling (with my 6-year old).

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

Response: America is a great country, which is why I chose it to be my home. I am not aware of a consensus definition of the term "systemic racism," and this question implicates policy questions for policymakers.

40. What case or legal representation are you most proud of?

Response: I represented members of the Charlottesville City Council who were sued in their personal capacities for voting to remove the Lee and Jackson statues in Charlottesville, Virginia. The plaintiffs were seeking to recover damages and significant attorneys' fees from the City Councilors. Among other things, my colleagues and I at Jones Day argued that the City Councilors were entitled to common law and statutory immunity for their votes, which were legislative in nature. We ultimately obtained summary judgment for our clients on statutory immunity grounds, with the court agreeing that the challenged votes were legislative in nature and constituted neither gross negligence nor an unlawful appropriation of funds. That ruling resulted in a complete dismissal of the claims against the City Councilors and meant that they could not be held personally liable for their votes.

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

Response: Yes.

a. How did you handle the situation?

Response: As an attorney, I was bound to zealously advocate for my clients and make the best possible arguments in favor of their positions, consistent with the law and my ethical obligations. My personal views played no role in the representation.

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

Response: Yes.

42. What three law professors' works do you read most often?

Response: I do not regularly read law professors' works.

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

Response: Federalist No. 78 has most shaped my views of the judicial role. It addresses the proper role of the judiciary in the Constitution's scheme of separation of powers.

44. What is a judicial opinion, law review article, or other legal opinion that made you change your mind?

Response: I cannot recall a judicial opinion, law review article, or other legal opinion that made me change my mind.

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

Response: The Supreme Court has not determined whether "an unborn child is a human being." As a federal judicial nominee, the Code of Conduct for United States Judges precludes me from expressing an opinion on any issue that could come before the courts.

46. Other than at your hearing before the Senate Judiciary Committee, have you ever testified under oath? Under what circumstances? If this testimony is available online or as a record, please include the reference below or as an attachment.

Response: To the best of my recollection, no.

47. In the course of considering your candidacy for this position, has anyone at the White House or Department of Justice asked for you to provide your views on:

a. *Roe v. Wade,* 410 U.S. 113 (1973)?

Response: No.

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

Response: No.

c. Systemic racism?

Response: No.

d. Critical race theory?

Response: No.

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

a. Apple?

Response: No.

b. Amazon?

Response: No.

c. Google?

Response: No.

d. Facebook?

Response: No.

e. Twitter?

Response: No.

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

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

Response: To the best of my recollection, no.

50. Have you ever confessed error to a court?

a. If so, please describe the circumstances.

Response: To the best of my recollection, no.

51. Please describe your understanding of the duty of candor, if any, that nominees have to state their views on their judicial philosophy and be forthcoming when testifying before the Senate Judiciary Committee. *See* U.S. Const. art. II, § 2, cl. 2.

Response: Judicial nominees swear an oath to tell the truth to the Senate Judiciary Committee and answer the Committee's questions to the best of their ability. I have upheld that oath.

Senator John Kennedy
Questions for the Record

Sparkle Sooknanan

1. **Are there any circumstances under which it is justifiable to sentence a criminal defendant to death? Please explain.**

   Response: Yes. Congress has enacted the federal death penalty, and in 18 U.S.C. § 3591, Congress set forth the circumstances in which a criminal defendant may be properly sentenced to death.

2. **Should a judge's opinions on the morality of the death penalty factor into the judge's decision to sentence a criminal defendant to death in accordance with the laws prescribed by Congress and the Eighth Amendment?**

   Response: No.

3. **Is the U.S. Supreme Court a legitimate institution?**

   Response: Yes.

4. **Is the current composition of the U.S. Supreme Court legitimate?**

   Response: Yes.

5. **Please describe your judicial philosophy, including your approach to constitutional and statutory interpretation. Be as specific as possible.**

   Response: The job of a district court judge is to listen to the parties, weigh the facts, and apply the law to those facts. My philosophy is that you should do all those things in a fair-minded way and follow the law and facts to the appropriate conclusion in every case. If confirmed, I would approach each case by setting aside any personal views or preconceptions I might have about how the case should be resolved and make a decision based on binding precedent and the record before me.

   When deciding cases that involve constitutional or statutory interpretation, I would first determine whether the Supreme Court or D.C. Circuit had previously interpreted the specific constitutional or statutory provision at issue. If such precedents exist, I would faithfully follow them. In the absence of such precedents, I would begin with the text of the constitutional provision or statute in question, which I would give controlling weight, and I would interpret the text in a manner consistent with the methods of interpretation that the Supreme Court has used in the most analogous circumstance.

6. Is originalism a legitimate method of constitutional interpretation?

Response: Yes. The Supreme Court has held that original public meaning governs the interpretation of constitutional provisions in various contexts. *See, e.g.*, *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022) (Second Amendment); *United States v. Jones*, 565 U.S. 400 (2012) (Fourth Amendment); *Crawford v. Washington*, 541 U.S. 36 (2004) (Sixth Amendment). If confirmed, I would faithfully apply all Supreme Court and D.C. Circuit precedent concerning the role of original meaning when interpreting constitutional provisions.

7. If called on to resolve a constitutional question of first impression with no applicable precedents from either the U.S. Supreme Court or the U.S. Courts of Appeals, to what sources of law would you look for guidance?

Response: Please see my response to Question 5.

8. Is textualism a legitimate method of statutory interpretation?

Response: The Supreme Court has held that the text of the Constitution or a statute is the starting point for any interpretive analysis. *See, e.g.*, *Ross v. Blake*, 578 U.S. 632, 638 (2016) ("Statutory interpretation, as we always say, begins with the text."). If "statutory text is plain and unambiguous," a judge "must apply the statute according to its terms." *Carcieri v. Salazar,* 555 U.S. 379, 387 (2009).

9. When is it appropriate for a judge to look beyond textual sources when determining the meaning of a statute or provision?

Response: Please see my response to Questions 5 and 8.

10. Does the meaning (rather than the applications) of the U.S. Constitution change over time? If yes, please explain the circumstances under which the U.S. Constitution's meaning changes over time and the relevant constitutional provisions.

Response: No. The Constitution is an enduring document that sets forth the principles that govern our Nation. The factual scenarios and legal claims may change over time, but the principles brought to bear on those claims do not change. The Constitution can only be amended pursuant to the amendment process in Article V.

11. Please describe the legal rule employed in *Rivas-Villegas v. Cortesluna*, 595 U.S. 1 (2021), and explain why the U.S. Supreme Court sided with the Petitioner.

Response: In *Rivas-Villegas v. Cortesluna*, the Supreme Court employed the well-established rule that in cases under 42 U.S.C. § 1983, "[q]ualified immunity attaches when an official's conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." 142 S. Ct. 4, 7 (2021). A right is

clearly established when it is "sufficiently clear that every reasonable official would have understood that what he is doing violates that right." *Id.* Applying that rule, the Court reversed the Ninth Circuit's determination that an officer was not entitled to qualified immunity on a claim that he used excessive force in violation of the Fourth Amendment. The Court disagreed with the Ninth Circuit's conclusion that existing precedent, *LaLonde v. County of Riverside*, 204 F.3d 947 (9th Cir. 2000), put the officer on notice that his conduct constituted excessive force. The Court instead found that the Ninth Circuit precedent was materially distinguishable and did not govern the case.

12. When is it appropriate for a district judge to issue a nationwide injunction? Please also explain the legal basis for issuing nationwide injunctions and the relevant factors a district judge should consider before issuing one.

Response: In issuing nationwide injunctions, district courts have relied on Federal Rule of Civil Procedure 65, which governs the issuance of injunctions generally. Whether it is appropriate for a district judge to issue a nationwide injunction is the subject of active litigation, *see, e.g.*, *Arizona v. Biden*, 31 F.4th 469, 483-85 (6th Cir. 2022) (Sutton, C.J., concurring) (questioning the legal authority for such injunctions), but the Supreme Court has said that "[a]n injunction is a drastic and extraordinary remedy, which should not be granted as a matter of course," *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165 (2010). If confirmed, I would faithfully apply all Supreme Court and D.C. Circuit precedent to any request for injunctive relief.

13. Is there ever a circumstance in which a district judge may seek to circumvent, evade, or undermine a published precedent of the U.S. Court of Appeals under which the judge sits or the U.S. Supreme Court?

Response: No.

14. Will you fully and faithfully apply all precedents of the U.S. Supreme Court and the U.S. Court of Appeals under which you would sit?

Response: Yes.

15. If confirmed, please describe what role U.S. Supreme Court dicta would play in your decisions.

Response: The Supreme Court has instructed that courts should "resort to the text of the statute" rather than an "isolated comment" in a Supreme Court opinion that "was unquestionably dictum because it was not essential to [the Court's] disposition of any of the issues." *Central Green Co. v. United States*, 531 U.S. 425, 431 (2001).

16. Have you ever considered an applicant's race, sex, or religion when making a hiring decision? If so, please provide full details.

Response: No.

17. When reviewing applications from persons seeking to serve as an intern, extern, or law clerk in your chambers, what role would the race, sex, or religion of the applicants play in your consideration?

Response: If confirmed, I would select law clerks based solely on which applicant is most qualified for the position, based on their prior experience, academic record, and demonstrated judgment.

18. According to an August 2022 story published by the New York Times Magazine, you denounced Jones Day's post-election litigation in Pennsylvania, saying: "This lawsuit was brought for no other reason than to deprive poor people of the right to vote."

a. Did you make this statement?

Response: No.

b. Did you make a statement like this?

Response: No. As I testified before the Committee, the quote in the New York Times article is inaccurate. I never communicated with the reporter listed in the byline or anyone in the media, directly or indirectly, about any internal discussions with my former law partners at Jones Day. I am precluded from detailing what I or others said at any internal, confidential meeting because, as a former partner, I am bound by an ongoing confidentiality obligation to Jones Day under the firm's Partnership Agreement.

c. Did you express this sentiment on the partner call described by the article?

Response: No. As I testified before the Committee, the quote in the New York Times article is inaccurate. I never communicated with the reporter listed in the byline or anyone in the media, directly or indirectly, about any internal discussions with my former law partners at Jones Day. I am precluded from detailing what I or others said at any internal, confidential meeting because, as a former partner, I am bound by an ongoing confidentiality obligation to Jones Day under the firm's Partnership Agreement.

Senate Judiciary Committee Hearing
"Nominations"
Questions for the Record for Sparkle Sooknanan
to be United States District Judge for the District of Columbia

QUESTIONS FROM SENATOR BLACKBURN

1. **Like many judicial nominees that have come before this Committee, you had an esteemed tenure at a law firm, Jones Day, which has a broad and diverse set of clients. However, when Jones Day agreed to represent former President Trump and the Pennsylvania Republican Party following the 2020 election, the *New York Times* quoted you as stating that the suit was an effort "to deprive poor people of the right to vote." You testified that these were not your words, but your timely withdrawal from Jones Day's prestigious partnership following that suit correlates with the sentiment of that statement.**

    a. **Do you believe that attorneys have an obligation to zealously represent their clients?**

    Response: Yes.

    b. **Do you believe that Jones Day had the obligation to zealously represent President Trump and the Republican Party—both of whom were longtime clients of the firm—while litigating an important constitutional issue?**

    Response: Yes.

    c. **While at Jones Day, did you ever recuse yourself from participating in the representation of a client due to moral quandaries over the client's case?**

    Response: No.

    d. **While a partner at Jones Day, did you ever advocate against the firm's representation of a client due to personal moral quandaries with that client's case?**

    Response: No.

    e. **Was Jones Day's representation of certain clients a factor in your decision to depart the firm and return to public service?**

    Response: No.

f. Do you believe your colleagues at Jones Day, in representing former President Trump and the Republican Party, participated in that litigation in order "to deprive poor people of the right to vote?"

Response: No.

g. Had you been asked to participate in the firm's representation of former President Trump and the Pennsylvania Republican Party, would you have willingly joined the matter?

i. If not, on what grounds would you have declined the opportunity?

Response: I was not asked to participate in the firm's representation. Had that happened, I would have given the request due consideration, as I did with every request during my time in private practice.

h. You testified that the quote the New York Times attributed to you was "not [your] words." What exactly did you say at that partners' meeting discussing the litigation?

Response: I stand by my testimony before the Committee. The quote in the New York Times article is inaccurate. I never communicated with the reporter listed in the byline or anyone in the media, directly or indirectly, about any internal discussions with my former law partners at Jones Day. I am precluded from detailing what I or others said at any internal, confidential meeting because, as a former partner, I am bound by an ongoing confidentiality obligation to Jones Day under the firm's Partnership Agreement.

i. You testified that the quote the New York Times attributed to you was "not [your] words." Did you ever use different words to express the sentiment that the litigation in question was filed to deprive poor people of the right to vote?

Response: No.

j. As a partner at Jones Day, did you ever personally profit from the firm's representation of former President Trump or the Republican Party? In other words, was any part of your compensation derived from the firm's earnings on any matters where President Trump or the Republican Party were clients?

Response: I do not know whether any of my direct compensation was derived from the firm's representation of former President Trump or the Republican Party.

2. **Earlier in your career, you clerked for Justice Sonia Sotomayor. Last year, it was reported that Justice Sotomayor used her taxpayer-funded staff to coordinate speaking engagements at public institutions in exchange for selling and promoting her books.**

    a. **Did you at any time during your clerkship do any work to facilitate or otherwise participate in the promotion of one of Justice Sotomayor's books?**

    Response: No.

    b. **Were you aware of any of Justice Sotomayor's taxpayer-funded staff who did participate in such promotion?**

    Response: To the best of my recollection, no.