Senator Chuck Grassley, Ranking Member
Questions for the Record
Judge Maame Ewusi-Mensah Frimpong
Judicial Nominee to the United States District Court for the Central District of California

1. **During the Obama administration, you worked with the Justice Department in Eric Holder's and Tony West's offices. I've learned that, while you were with the Justice Department, you were involved in directing corporate settlement money to liberal activist groups.[1] These liberal groups were not parties to the settlements. These liberal groups were not injured by the events that led to the settlements. And if corporations paid money to these liberal groups, the DOJ reduced the overall amount that the corporations had to pay. A leader for one of these liberal groups wrote in an email, "I would be willing to have us build a statue [to Tony West] and then we could bow down to this statue each day after we get our $200,000+."**

   In one of the emails you sent, you explained how this worked. You wrote about having banks "[m]ake donations to categories of entities we have specified (as opposed to what the bank might normally choose to donate to)." In addition, someone at DOJ sent you an email that said "[c]oncerns include . . . not allowing Citi to pick a statewide intermediate like the Pacific Legal Foundation (does conservative property-rights free legal services)." And you wrote back, "Cool. I will keep you posted." Later that day, DOJ and Citi reached a prospective settlement agreement.

   The House Judiciary Committee attempted to perform oversight and better understand this situation, but that Committee was never able to get clear answers from the Department.

   As you are nominated to a seat on the federal bench, I am concerned that you were willing to use what should be a politically neutral entity—the Justice Department—to help tip the scale for liberal interests. The documents I have cited show that you were briefed on a strategy, you followed the strategy, and you expressed no apparent concerns about the political bias involved. I'd appreciate any comments you might have about your Justice Department work in directing settlement money to liberals and away from conservatives.

   Response: It appears this question concerns the settlements that the Department of Justice and several states entered into with Citigroup, Inc. (in July 2014) and Bank of America Corporation (in August 2014) to resolve federal and state claims against the banks under the Financial Reform, Recovery, and Enforcement Act and other statutes. The responses below relate to those settlements.

[1] Daily Caller, *Justice Department Exhibits*, https://dailycaller.com/wp-content/uploads/2017/10/FINAL-Exhibits-from-finding-from-doj-internal-documents-and-other-related-documents.pdf; John Allison et al., *Improper Third-Party Payments in U.S. Government Litigation Settlements*, Regulatory Transparency Project (Feb. 22, 2021), https://regproject.org/wp-content/uploads/RTP-Enforcement-and-Agency-Coercion-Working-Group-Paper-Improper-Third-Party-Payments-In-US-Government-Litigation-Settlements.pdf.

The Department and several states had pursued long-running investigations into these banks regarding their respective roles in causing the financial crisis. The Department's investigations revealed that the banks had packaged defective mortgages into risky investments—known as residential mortgage-backed securities, or "RMBS"—and then lied to investors about these investments, leading to complex, widespread, and nationwide harms to American consumers and communities. According to the Department, those harms included leaving large numbers of homeowners severely underwater on their mortgages and leaving many communities with large numbers of homeowners who had lost their homes, were severely underwater on their mortgages, or were so underwater on their mortgages that they had abandoned their homes—leading to severe blight in many places.

In resolving the claims arising from these investigations, the Department's aims were to ensure that the banks: (1) acknowledged their wrongdoing in a fulsome statement of facts; (2) paid appropriate statutory penalties to the United States and the several states; and (3) took meaningful action to effectively redress the substantial harm their wrongdoing had caused to American consumers and communities.

The Department sought to accomplish this third aim through the consumer relief provisions of these settlements. And the Department dedicated a very small portion of the consumer relief provisions—on the order of one to two percent—to donation provisions akin to those the United States had entered into in many other settlement agreements in prior administrations, such as the Softwood Lumber Agreement of 2006 under the George W. Bush Administration.

The Department did not discriminate against any third-party organization in these settlements on the basis of political leaning, involvement, or activity, and neither did I.

The Department, through its investigations, had determined that the banks' acknowledged wrongdoing had led to complex, widespread, and nationwide harms to American consumers and communities. It was therefore important to the Department that the settlements provide meaningful and effective redress of those harms. Given the nature of the harms, the Department dedicated a portion of the consumer relief provisions to donation provisions which would redress the harms through specific activities such as housing counseling—given that so many Americans had lost their homes as a result of the banks' acknowledged wrongdoing—and foreclosure prevention legal assistance—given that so many Americans were at risk of foreclosure as a result of the banks' acknowledged wrongdoing.

The settlement agreements did not specify the end recipients of any of the donation provisions, and the Department did not select any of the end recipients of the donation provisions. Because the purpose of the consumer relief provisions was to ensure that the banks made meaningful and effective efforts to redress the considerable harm their admitted wrongdoing had done to American consumers and communities, the donation provisions specified the redress activities to which the funds were to go.

In the case of some of the donation provisions, such as those concerning housing counseling, the donation provisions specified that the banks would select the end recipients from a list of agencies certified and vetted by the Department of Housing and Urban Development (HUD) as qualified to provide housing counseling.

In the case of some of the donation provisions, such as those concerning foreclosure prevention legal assistance, the donation provisions specified that neutral statewide intermediaries—namely each state's congressionally-authorized Interest on Lawyer Trust Account (IOLTA) Program or its state bar association-affiliated analog—would be responsible for directing funds to end recipients and vetting them. Each of the fifty states and the District of Columbia had a single congressionally-authorized Interest on Lawyer Trust Account (IOLTA) Program created by the state supreme court or the state legislature which provided grants for various charitable causes including civil legal assistance. Because these programs were known to be adept at directing funds and vetting recipients for civil legal assistance, the banks and the Department agreed that these programs—some of which were formally called "IOLTAs" and some of which went by another name but were state bar association-affiliated—would be the proper intermediaries for the donations concerning legal assistance. This was consistent with the Department's aim to ensure that each bank's efforts to redress the complex, nationwide, and widespread harm their admitted wrongdoing had done to American consumers and communities was meaningful and effective.

2. **During the California Judges Association's conference in September 2020, you helped facilitate a virtual panel called Judicial Independence and the Optics of Accountability. You expressed that you and another judge were both "surprised, when [you] got on the bench, how challenging it is . . . to remain impartial and to drown out the noise which . . . is deafening." You said the panel's purpose was "just to acknowledge that." You also discussed the importance of judicial impartiality in each case. I have a few questions based on your comments.**

    a. **What are the "optics of accountability"?**

    Response: The panel referred to in the question concerned various ways that judges are believed to be held accountable in the public eye, such as through media criticism, judicial discipline, and judicial elections, specifically within the context of the state courts of California. As discussed during the panel, in the state courts of California, judges do not have life tenure, they must stand for re-election every six years, they are subject to recall nearly every year, and they are susceptible to peremptory challenge in every case—per California law, in every case, each side is entitled to exercise one peremptory challenge against the judge.

    The panel addressed the fact that in light of this, some members of the public may seek to use media criticism, judicial discipline, and judicial elections, to influence judicial decisionmaking in an effort to "hold judges accountable" or "make judges more responsive to their constituents." My statement addressed the fact that this environment can weigh heavily on the judge who simply seeks to follow the law

in every case, without fear or favor. In my five and a half years on the bench, it has been my experience that my colleagues and I work very hard to set aside any consideration of this environment when deciding the cases that come before us, and I have been successful in doing so at all times.

b. What issues do you find make up the "deafening" noise that challenges judicial impartiality?

Response: The panel referred to in the question concerned various ways that judges are believed to be held accountable in the public eye, such as through media criticism, judicial discipline, and judicial elections, specifically within the context of the state courts of California. As discussed during the panel, in the state courts of California, judges do not have life tenure, they must stand for re-election every six years, they are subject to recall nearly every year, and they are susceptible to peremptory challenge in every case—per California law, in every case, each side is entitled to exercise one peremptory challenge against the judge.

The panel addressed the fact that in light of this, some members of the public may seek to use media criticism, judicial discipline, and judicial elections, to influence judicial decisionmaking in an effort to "hold judges accountable" or "make judges more responsive to their constituents." My statement addressed the fact that this environment can weigh heavily on the judge who simply seeks to follow the law in every case, without fear or favor. In my five and a half years on the bench, it has been my experience that my colleagues and I work very hard to set aside any consideration of this environment when deciding the cases that come before us, and I have been successful in doing so at all times.

c. As a judge, how do you deal with this noise in the effort to be impartial?

Response: I focus on the fact that as a trial court judge, my role is limited to deciding cases and controversies that come before me based upon the rule of law—that is, binding precedent, applicable law, and facts supported by evidence. In every case that comes before me, I hear from the parties, research the law, make factual findings as appropriate, and apply the law to the facts consistent with binding precedent. In my five and a half years on the bench, it has been my experience that my colleagues and I work very hard to set aside any consideration of the outside environment when deciding the cases that come before us, and I have been successful in doing so at all times.

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

Response: I am not familiar with this term nor am I aware of its use by the Supreme Court or the Ninth Circuit Court of Appeals.

4. You can answer the following questions yes or no:

a. **Was *Brown v. Board of Education* correctly decided?**
b. **Was *Loving v. Virginia* correctly decided?**
c. **Was *Griswold v. Connecticut* correctly decided?**
d. **Was *Roe v. Wade* correctly decided?**
e. **Was *Gonzales v. Carhart* correctly decided?**
f. **Was *District of Columbia v. Heller* correctly decided?**
g. **Was *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* correctly decided?**
h. **Was *Sturgeon v. Frost* correctly decided?**
i. **Was *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission* correctly decided?**

Response: As a sitting judge on the Los Angeles Superior Court, and now a nominee for the federal district court, it is generally not for me to opine on the correctness of binding precedent in light of my duty to apply any and all binding precedent and to remain fair, open-minded, and impartial in every case. I agree with prior judicial nominees, however, that *Marbury v. Madison*, *Brown v. Board of Education*, and *Loving v. Virginia* establish foundational principles unlikely to be tested in any case to come before me and were correctly decided.

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

Response: I am not familiar with Judge Jackson's statement or the context in which it was made. Black's Law Dictionary (11th ed. 2019) defines the doctrine of living constitutionalism as follows: "The doctrine that the Constitution should be interpreted and applied in accordance with changing circumstances and, in particular, with changes in social values. While many authorities use the terms living constitutionalism and nonoriginalism interchangeably, others view living constitutionalism as a form of nonoriginalism that values interpretive conformity with changed circumstances and norms more greatly than do other forms of nonoriginalism." Rather than applying any particular label to myself as a judge, what I do as a sitting Los Angeles Superior Court judge, and what I will do if confirmed as a federal district court judge, is apply precedent when interpreting the Constitution.

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

Response: As a sitting judge, it is improper for me to weigh in on policy matters, such as what a law firm's clients should be able to do. If confirmed as a federal district court judge, I would handle only the cases and controversies that come before me, and it would be imprudent for me to opine on what law firm's clients should be able to do.

While participating in a September 2020 panel, you acknowledged that you found it "challenging" to "remain impartial" when you got on the bench. Given that difficulty, what assurances do we have that you will remain impartial if you are confirmed?

Response: As discussed in response to Question 2 above, as a trial court judge, my role is limited to deciding cases and controversies that come before me based upon the rule of law—that is, binding precedent, applicable law, and facts supported by evidence. In every case that comes before me, I hear from the parties, research the law, make factual findings as appropriate, and apply the law to the facts consistent with binding precedent. In my five and a half years on the bench, it has been my experience that my colleagues and I work very hard to set aside any consideration of the outside environment when deciding the cases that come before us, and I have been successful in doing so at all times.

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

Response: I am not familiar with the term "social equity" nor am I aware of its use by the Supreme Court or the Ninth Circuit Court of Appeals.

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

Response: I am not familiar with this statement or the context in which it was made. As a sitting judge, I reach the answer that the law dictates in every case. If confirmed as a federal district court judge, I would seek to do the same.

9. Is whether a specific substance causes cancer in humans a scientific question?

Response: As a sitting judge and a judicial nominee, I do not wish to prejudge any issue that might come before me. If confirmed as a federal district court judge, if faced with a case or controversy raising this question, I will hear from the parties, research the relevant law, make factual findings as appropriate, and apply the law to the facts as dictated by binding precedent.

10. Is when a "fetus is viable" a scientific question?

Response: As a sitting judge and a judicial nominee, I do not wish to prejudge any issue that might come before me. If confirmed as a federal district court judge, if faced with a case or controversy raising this question, I will hear from the parties, research the relevant law, make factual findings as appropriate, and apply the law to the facts as dictated by binding precedent.

11. Is when a human life begins a scientific question?

Response: As a sitting judge and a judicial nominee, I do not wish to prejudge any issue that might come before me. If confirmed as a federal district court judge, if faced with a case or controversy raising this question, I will hear from the parties, research the

relevant law, make factual findings as appropriate, and apply the law to the facts as dictated by binding precedent.

12. Can someone change his or her biological sex?

Response: As a sitting judge and a judicial nominee, I do not wish to prejudge any issue that might come before me. If confirmed as a federal district court judge, if faced with a case or controversy raising this question, I will hear from the parties, research the relevant law, make factual findings as appropriate, and apply the law to the facts as dictated by binding precedent.

13. Is threatening Supreme Court Justices right or wrong?

Response: It is my understanding that it may be a violation of federal law to threaten a Supreme Court Justice under certain circumstances. Opining on whether, as a moral matter, it is right or wrong to do so is outside of my province as a judge.

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

Response: As a sitting judge and a judicial nominee, I do not wish to prejudge any issue that might come before me. If confirmed as a federal district court judge, if faced with a case or controversy raising this question, I will hear from the parties, research the relevant law, make factual findings as appropriate, and apply the law to the facts as dictated by binding precedent.

15. Do you think the Supreme Court should be expanded?

Response: As a sitting judge and a judicial nominee, it is not for me to opine on whether the Supreme Court should be expanded.

16. Does the president have the power to remove senior officials at his pleasure?

Response: As a sitting judge and a judicial nominee, I do not wish to prejudge any issue that might come before me. If confirmed as a federal district court judge, if faced with a case or controversy raising this question, I will hear from the parties, research the relevant law, make factual findings as appropriate, and apply the law to the facts as dictated by binding precedent.

17. Is it possible that removing someone—as is the President's power—can be for wholly apolitical reasons?

Response: As a factual matter, it is possible that the removal of an official can be for nonpartisan reasons.

18. Is a social worker qualified to respond to a domestic violence call where there is an allegation that the aggressor is armed?

Response: It is for policy makers to consider which individuals are best suited to respond to emergency calls. As a sitting judge, it is improper for me to weigh in on policy matters, such as the one raised by this question. If confirmed as a federal district court judge and faced with a case or controversy raising this question, I will hear from the parties, research the relevant law, make factual findings as appropriate, and apply the law to the facts as dictated by binding precedent.

19. Is it appropriate for the government to use law enforcement to enforce social distancing mandates and gathering limitations for individuals attempting to practice their religion in a church, synagogue, mosque or any other place of religious worship?

Response: As a sitting judge, it is improper for me to weigh in on policy matters, such as what is appropriate for the government to do. If confirmed as a district court judge, I would handle only the cases and controversies that come before me, and it would be imprudent for me to opine on what is appropriate for the government to do.

20. Do you believe that we should defund or decrease funding for police departments and law enforcement, including the law enforcement entities responsible for protecting the federal courthouses in Portland from violent rioters? Please explain.

Response: It is for policy makers to consider the funding of police departments and law enforcement. As a sitting judge, it is improper for me to weigh in on policy matters, such as the one raised by this question. If confirmed as a federal district court judge and faced with a case or controversy raising this question, I will hear from the parties, research the relevant law, make factual findings as appropriate, and apply the law to the facts as dictated by binding precedent.

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

Response: It is for policy makers to consider the structure and funding of police departments and other support services. As a sitting judge, it is improper for me to weigh in on policy matters, such as the one raised by this question. If confirmed as a federal district court judge and faced with a case or controversy raising this question, I will hear from the parties, research the relevant law, make factual findings as appropriate, and apply the law to the facts as dictated by binding precedent.

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

Response: If confirmed as a federal district court judge, I would be bound by the precedent of the Ninth Circuit Court of Appeals. The Ninth Circuit has described the two-part test that it applies after the Supreme Court decision in *Heller v. District of*

Columbia as follows: (1) "[We] ask if the challenged law affects conduct that is protected by the Second Amendment. We base that determination on the 'historical understanding of the scope of the right.'" (2) "If the challenged restriction burdens conduct protected by the Second Amendment . . . we move to the second step of the analysis and determine the appropriate level of scrutiny." *Young v. Hawaii*, 992 F.3d 765, 783-784 (9th Cir. 2021) (quotation marks and citations omitted). According to the Ninth Circuit, in reliance on *Heller*, a law which amounts to destruction of the right is unconstitutional; a law which severely burdens the core of the right is examined under strict scrutiny; and a law which has a lesser effect on the right is examined under intermediate scrutiny. *Id.* at 784.

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

Response: I am unaware of any Supreme Court or Ninth Circuit precedent that definitively answers this question, and this issue has not come before me as a Los Angeles Superior Court judge. As a sitting judge and a judicial nominee, I do not wish to prejudge any issue that might come before me. If confirmed as a federal district court judge and faced with a case or controversy raising this question, I will hear from the parties, research the relevant law, make factual findings as appropriate, and apply the law to the facts as dictated by binding precedent.

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

Response: If confirmed as a federal district court judge, if faced with a case or controversy raising claims under the First Amendment, I will hear from the parties, research the relevant law, make factual findings as appropriate, and apply the law to the facts as dictated by binding precedent.

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

Response: As a sitting judge and a judicial nominee, I do not wish to prejudge any issue that might come before me. If confirmed as a federal district court judge, if faced with a case or controversy raising this question, I will hear from the parties, research the relevant law, make factual findings as appropriate, and apply the law to the facts as dictated by binding precedent.

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

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

Response: In any claim under this or any other statute, the court would ultimately decide whether the claim succeeds.

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

Response: In *Burwell v. Hobby Lobby*, the Supreme Court determined that the burden on the plaintiffs was substantial because if the plaintiffs failed to comply with the challenged law, "the economic consequences will be severe," the alternative course "would also entail substantial economic consequences," and the remaining options would be "costly." 573 U.S. 682, 720-722 (2014). Furthermore, the Court stated, "We doubt that the Congress that enacted RFRA—or, for that matter, ACA—would have believed it a tolerable result to put family-run businesses to the choice of violating their sincerely held religious beliefs or making all of their employees lose their existing healthcare plans." *Id.* at 723. As a sitting judge on the Los Angeles Superior Court, and now a nominee for the federal district court, my role is not to determine whether or not I agree with binding precedent but to ascertain what it is and to apply it.

27. Judge Stephen Reinhardt once explained that, because the Supreme Court hears a limited number of cases each year, part of his judicial mantra was, "They can't catch 'em all." Is this an appropriate approach for a federal judge to take?

Response: I am not familiar with this statement or the context in which it was made. My approach as a Los Angeles Superior Court judge is to strictly adhere to the rule of law in every case and apply any and all binding precedent of the Supreme Court and the Courts of Appeals in every case. If confirmed as a federal district court judge, I will do the same.

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

Response: The Supreme Court has defined "fighting words" as "those which by their very utterance inflict injury or tend to incite an immediate breach of the peace. It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality." *Chaplinsky v. New Hampshire*, 315 U.S. 568, 572 (1942). *See also Mahanoy Area Sch. Dist. v. B. L.*, 141 S. Ct. 2038, 2046 (2021).

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

Response: The Supreme Court has defined "true threats" to "encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals." *Virginia v. Black*, 538 U.S. 343, 359 (2003). *See also Watts v. United States*, 394 U.S. 705, 708 (1969). The Court has further stated: "The speaker need not actually intend to carry out the threat. Rather, a prohibition on true threats protect[s] individuals from the fear of

violence and from the disruption that fear engenders, in addition to protecting people from the possibility that the threatened violence will occur. Intimidation in the constitutionally proscribable sense of the word is a type of true threat, where a speaker directs a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death." *Virginia v. Black*, 538 U.S. at 359-360 (quotation marks and citations omitted).

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

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

Response: No.

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

Response: No.

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

Response: Yes.

31. The Alliance for Justice is a "national association of over 120 organizations, representing a broad array of groups committed to progressive values and the creation of an equitable, just, and free society."

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

Response: No.

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

Response: No.

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

Response: To the extent that this question was intended to refer to the Alliance for Justice, the response is No.

32. 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?

Response: No.

b. Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund.

Response: To the extent that this question was intended to ask whether anyone associated with these entities has requested that I provide any services, the response is No.

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

Response: No.

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

Response: No.

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

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

Response: No.

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

Response: No.

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

Response: Yes.

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

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

Response: No.

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

Response: No.

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

Response: No.

35. 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 November 2020, the chair of then-Senator Kamala D. Harris's Central District of California Judicial Commission contacted me about a vacancy on the United States District Court for the Central District of California. Later that month, I submitted applications for the position to Senator Harris's commission and to Senator Dianne Feinstein's Judicial Advisory Process. On March 9, 2021, I was interviewed by Senator Alex Padilla's Judicial Commission for the Central District of California. On May 7, 2021, I was interviewed by Senator Padilla. On April 23, 2021, I was interviewed by Senator Feinstein's Central District Appointment Committee. On April 30, 2021, I was

interviewed by the chair of Senator Feinstein's Judicial Advisory Process. On June 7, 2021, an attorney from the White House Counsel's Office advised me that I was being considered for an opening on the Central District of California. On June 9, 2021, I interviewed with attorneys from the White House Counsel's Office. Since June 9, 2021, I have been in contact with officials from the Office of Legal Policy at the United States Department of Justice. On September 20, 2021, my nomination was submitted to the Senate.

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

Response: I spoke with Brian Fallon, a former U.S. Department of Justice colleague whom I have known for several years, about the process of judicial nominations.

37. 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: I spoke with a member of the local chapter of the American Constitution Society about the local chapter's desire to include me in a list of persons to recommend for federal judicial positions.

38. 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, or any other such Arabella dark-money fund that is still shrouded.

Response: No.

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

Response: A friend of mine, who I have known for nearly two decades, was formerly employed by the Open Society Foundations overseas in connection with its international work. Our discussions concerned our personal and professional lives and families. They did not concern any involvement or interest by the Open Society Foundations in my selection process or in judicial nominations generally.

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

Response: On June 7, 2021, an attorney from the White House Counsel's Office advised me that I was being considered for an opening on the Central District of California. On

June 9, 2021, I interviewed with attorneys from the White House Counsel's Office. Since June 9, 2021, I have been in contact with officials from the Office of Legal Policy at the United States Department of Justice. On September 20, 2021, my nomination was submitted to the Senate.

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

Response: I received the questions on October 27. I prepared draft answers to each question based on my own knowledge and legal research. I submitted my draft answers to the U.S. Department of Justice Office of Legal Policy for feedback, and, after considering the feedback received, I finalized my answers for submission on November 1.

Senator Marsha Blackburn
Questions for the Record to Maame Frimpong
Nominee for the Central District of California

1. **During the Obama administration, there was a practice at the Department of Justice that allowed prosecutors to reach settlements in which defendants paid compensation to third-party groups instead of directly to victims. There are allegations that DOJ improperly directed this settlement money to politically-favored groups, while preventing money from going to conservative groups. These third parties were not parties to the litigation nor victims, but DOJ offered to reduce the overall settlement amount depending on how much the settling party paid to the favored-third parties—calling this quid pro quo reduction an "enhanced credit." In email records from 2014 and 2015, during your time as a senior official at the Department, you appear to have been involved in this effort and aware of political discrimination.**

   During your time at DOJ:

   Response: It appears the questions below concern the settlements that the Department of Justice and several states entered into with Citigroup, Inc. (in July 2014) and Bank of America Corporation (in August 2014) to resolve federal and state claims against the banks under the Financial Reform, Recovery, and Enforcement Act and other statutes. The responses below relate to those settlements.

   The Department and several states had pursued long-running investigations into these banks regarding their respective roles in causing the financial crisis. The Department's investigations revealed that the banks had packaged defective mortgages into risky investments—known as residential mortgage-backed securities, or "RMBS"—and then lied to investors about these investments, leading to complex, widespread, and nationwide harms to American consumers and communities. According to the Department, those harms included leaving large numbers of homeowners severely underwater on their mortgages and leaving many communities with large numbers of homeowners who had lost their homes, were severely underwater on their mortgages, or were so underwater on their mortgages that they had abandoned their homes—leading to severe blight in many places.

   In resolving the claims arising from these investigations, the Department's aims were to ensure that the banks: (1) acknowledged their wrongdoing in a fulsome statement of facts; (2) paid appropriate statutory penalties to the United States and the several states; and (3) took meaningful action to effectively redress the substantial harm their wrongdoing had caused to American consumers and communities.

   The Department sought to accomplish this third aim through the consumer relief provisions of these settlements. And the Department dedicated a very small portion of the consumer relief provisions—on the order of one to two percent—to donation provisions akin to those the United States had entered into in many other settlement agreements in

prior administrations, such as the Softwood Lumber Agreement of 2006 under the George W. Bush Administration.

a. Did DOJ discriminate against any third-party organization on the basis of political leaning, involvement, or activity? How were these third-party organizations selected or designated?

Response: No. The Department did not discriminate against any third-party organization in these settlements on the basis of political leaning, involvement, or activity.

The Department, through its investigations, had determined that the banks' acknowledged wrongdoing had led to complex, widespread, and nationwide harms to American consumers and communities. It was therefore important to the Department that the settlements provide meaningful and effective redress of those harms. Given the nature of the harms, the Department dedicated a portion of the consumer relief provisions to donation provisions which would redress the harms through specific activities such as housing counseling—given that so many Americans had lost their homes as a result of the banks' acknowledged wrongdoing—and foreclosure prevention legal assistance—given that so many Americans were at risk of foreclosure as a result of the banks' acknowledged wrongdoing.

The settlement agreements did not specify the end recipients of any of the donation provisions, and the Department did not select any of the end recipients of the donation provisions. Because the purpose of the consumer relief provisions was to ensure that the banks made meaningful and effective efforts to redress the considerable harm their admitted wrongdoing had done to American consumers and communities, the donation provisions specified the redress activities to which the funds were to go.

In the case of some of the donation provisions, such as those concerning housing counseling, the donation provisions specified that the banks would select the end recipients from a list of agencies certified and vetted by the Department of Housing and Urban Development (HUD) as qualified to provide housing counseling.

In the case of some of the donation provisions, such as those concerning foreclosure prevention legal assistance, the donation provisions specified that neutral statewide intermediaries—namely each state's congressionally-authorized Interest on Lawyer Trust Account (IOLTA) Program or its state bar association-affiliated analog—would be responsible for directing funds to end recipients and vetting them. Each of the fifty states and the District of Columbia had a single congressionally-authorized Interest on Lawyer Trust Account (IOLTA) Program created by the state supreme court or the state legislature which provided grants for various charitable causes including civil legal assistance. Because these

programs were known to be adept at directing funds and vetting recipients for civil legal assistance, the banks and the Department agreed that these programs—some of which were formally called "IOLTAs" and some of which went by another name but were state bar association-affiliated—would be the proper intermediaries for the donations concerning legal assistance. This was consistent with the Department's aim to ensure that each bank's efforts to redress the complex, nationwide, and widespread harm their admitted wrongdoing had done to American consumers and communities was meaningful and effective.

b. Did DOJ ever offer to reduce the overall settlement amount depending on how much the charged or settling party paid to the favored-third parties? Was there a fixed or understood rate from donation to settlement reduction?

Response: There were no favored third parties nor any settlement reduction for donations to any favored third parties in these settlements.

c. What was your involvement in organizing these third party payments? Did you have a hand in deciding which groups would receive money?

Response: I had no involvement in organizing any third party payments, nor did I have a hand in deciding which groups would receive money. I played a lead role in negotiating the consumer relief provisions of these settlements, including the donation provisions.

The Department believed that including consumer relief provisions in these settlements was critical to rectifying the harms that the banks had done through their packaging of defective mortgages into risky investments and lying to investors about those investments. According to the Department, this admitted wrongdoing had led to complex, widespread, and nationwide harms—large numbers of homeowners severely underwater on their mortgages and many communities with large numbers of homeowners who had lost their homes, were severely underwater on their mortgages, or were so underwater on their mortgages that they had abandoned their homes—leading to severe blight in many places.

Given the nature of these harms, the Department dedicated a portion of the consumer relief provisions to donation provisions which would redress the harms through specific activities such as housing counseling—given that so many Americans had lost their homes as a result of the banks' acknowledged wrongdoing—and foreclosure prevention legal assistance—given that so many Americans were at risk of foreclosure as a result of the banks' acknowledged wrongdoing.

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considerable harm their admitted wrongdoing had done to American consumers and communities, the donation provisions specified the redress activities to which the funds were to go.

In the case of some of the donation provisions, such as those concerning housing counseling, the donation provisions specified that the banks would select the end recipients from a list of agencies certified and vetted by the Department of Housing and Urban Development (HUD) as qualified to provide housing counseling.

In the case of some of the donation provisions, such as those concerning foreclosure prevention legal assistance, the donation provisions specified that neutral statewide intermediaries—namely each state's congressionally-authorized Interest on Lawyer Trust Account (IOLTA) Program or its state bar association-affiliated analog—would be responsible for directing funds to end recipients and vetting them. Each of the fifty states and the District of Columbia had a single congressionally-authorized Interest on Lawyer Trust Account (IOLTA) Program created by the state supreme court or the state legislature which provided grants for various charitable causes including civil legal assistance. Because these programs were known to be adept at directing funds and vetting recipients for civil legal assistance, the banks and the Department agreed that these programs—some of which were formally called "IOLTAs" and some of which went by another name but were state bar association-affiliated—would be the proper intermediaries for the donations concerning legal assistance. This was consistent with the Department's aim to ensure that each bank's efforts to redress the complex, nationwide, and widespread harm their admitted wrongdoing had done to American consumers and communities was meaningful and effective.

Nomination of Maame Ewusi-Mensah Frimpong
to be United States District Judge for the Central District of California Questions for the Record
Submitted October 27, 2021

QUESTIONS FROM SENATOR COTTON

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

   Response: No.

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

   Response: No.

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

   Response: As a sitting judge on the Los Angeles Superior Court, and now a nominee for the federal district court, it is generally not for me to opine on the correctness of binding precedent in light of my duty to apply any and all binding precedent and to remain fair, open-minded, and impartial in every case.

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

   Response: The Supreme Court has held that the right set forth in the Second Amendment is an individual right. *District of Columbia v. Heller*, 554 U.S. 570 (2008).

5. **Please describe what you believe to be the Supreme Court's holding in *Tandon v. Newsom*, 141 S. Ct. 1294 (2021).**

   Response: I understand the Supreme Court's holding in *Tandon v. Newsom*, 141 S. Ct. 1294 (2021), to have four elements: (1) governmental regulations are not neutral and generally applicable—and they therefore trigger strict scrutiny—whenever they treat any comparable secular activity more favorably than religious exercise; (2) the question of whether a secular activity is "comparable" to religious exercise is determined with reference to the asserted government interest in the regulation; (3) the government bears the burden of showing that the regulation is narrowly tailored—namely, that there is not a less restrictive means of achieving the asserted government interest; and (4) the rescinding of COVID-19 restrictions does not moot a case challenging such restrictions.

6. **Please describe what you believe to be the Supreme Court's holding in *Brnovich v. Democratic National Committee*, 141 S. Ct. 2321 (2021).**

Response: *Brnovich v. Democratic National Committee*, 141 S. Ct. 2321 (2021) concerned a challenge to certain Arizona policies and provisions of law relating to elections. The Supreme Court stated, "Arizona's out-of-precinct policy and [Arizona House Bill] 2023 do not violate § 2 of the [Voting Rights Act], and [Arizona House Bill] 2023 was not enacted with a racially discriminatory purpose." *Id*. at 2350.

7. Please describe what you believe to be the Supreme Court's holding in *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018).

Response: In *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018), the Supreme Court addressed the permissible length of immigration detention under certain provisions of immigration law as well as whether the immigration provisions at issue required periodic bond hearings for persons in immigration detention. The Court stated that: (1) "neither [section 1225(b)(1) nor section 1225(b)(2) of Title 8] can reasonably be read to limit detention to six months," *id*. at 844; (2) "[l]ike § 1225(b), § 1226(c) does not on its face limit the length of the detention it authorizes," *id.* at 846; and (3) "the Court of Appeals erroneously concluded that periodic bond hearings are required under the immigration provisions at issue," *id*. at 851.

8. Do federal drug scheduling actions pursuant to the Controlled Substances Act preempt state or local laws that purport to 'legalize' substances contrary to their federal drug control status?

Response: The Supreme Court stated, in *Gonzales v. Raich*, 545 U.S. 1, 5, 9 (2005), that the power of Congress to regulate interstate commerce "includes the power to prohibit the local cultivation and use of marijuana in compliance with California law" and that the Controlled Substances Act is "a valid exercise of federal power." If confirmed, in any case raising these issues, I will hear from the parties, research the relevant law, make factual findings as appropriate, and apply the law to the facts as dictated by binding precedent.

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

Response: As a sitting judge on the Los Angeles Superior Court, and now a nominee for the federal district court, I have no view of arbitration as a policy matter. Were I to face a case or controversy raising this question, I would hear from the parties, research the relevant law, make factual findings as appropriate, and apply the law to the facts as dictated by binding precedent.

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

Response: I received the questions on October 27. I prepared draft answers to each question based on my own knowledge and legal research. I submitted my draft answers to the U.S. Department of Justice Office of Legal Policy for feedback, and, after considering the feedback received, I finalized my answers for submission on November 1.

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

Response: No. As stated above, I prepared draft answers to each question based on my own knowledge and legal research. I submitted my draft answers to the U.S. Department of Justice Office of Legal Policy for feedback, and, after considering the feedback received, I finalized my answers for submission.

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

Questions for the Record for Maame Ewusi-Mensah Frimpong, Nominee for the Central District of California

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. According to an investigation by the Federalist Society's Regulatory Transparency Project, in 2014 and 2015, The Obama administration, "primarily the DOJ, negotiated settlements which required the settling defendants to pay "donations" to hundreds of its favored, politically-friendly third parties such as, for example, the National Council of La Raza, the National Fish & Wildlife Foundation, and the National Community Reinvestment Coalition. These third parties were not parties to the litigations nor victims of the alleged misbehavior. Moreover, the Obama DOJ offered to reduce the overall settlement monetary amount depending on how much the charged/settling party paid to the favored third parties, calling the reduction an 'enhanced credit.' In fact, for every dollar the banks 'donated,' they received two dollars credited towards

their settlement reductions. These third-parties successfully lobbied the Obama DOJ for settlement monies, and the Obama DOJ also made sure that organizations which were not aligned with the administration's political preferences, such as the Pacific Legal Foundation, did not receive nor secondarily benefit from these monies."

Response: It appears the questions below concern the settlements that the Department of Justice and several states entered into with Citigroup, Inc. (in July 2014) and Bank of America Corporation (in August 2014) to resolve federal and state claims against the banks under the Financial Reform, Recovery, and Enforcement Act and other statutes. The responses below relate to those settlements.

The Department and several states had pursued long-running investigations into these banks regarding their respective roles in causing the financial crisis. The Department's investigations revealed that the banks had packaged defective mortgages into risky investments—known as residential mortgage-backed securities, or "RMBS"—and then lied to investors about these investments, leading to complex, widespread, and nationwide harms to American consumers and communities. According to the Department, those harms included leaving large numbers of homeowners severely underwater on their mortgages and leaving many communities with large numbers of homeowners who had lost their homes, were severely underwater on their mortgages, or were so underwater on their mortgages that they had abandoned their homes—leading to severe blight in many places.

In resolving the claims arising from these investigations, the Department's aims were to ensure that the banks: (1) acknowledged their wrongdoing in a fulsome statement of facts; (2) paid appropriate statutory penalties to the United States and the several states; and (3) took meaningful action to effectively redress the substantial harm their wrongdoing had caused to American consumers and communities.

The Department sought to accomplish this third aim through the consumer relief provisions of these settlements. And the Department dedicated a very small portion of the consumer relief provisions—on the order of one to two percent—to donation provisions akin to those the United States had entered into in many other settlement agreements in prior administrations, such as the Softwood Lumber Agreement of 2006 under the George W. Bush Administration.

a. **Please confirm that you worked at the Department of Justice in 2014 and 2015.**

   Response: I worked at the Department of Justice for all of 2014 and left the Department in January of 2015.

b. **Please confirm that during this period, you worked for both Attorney General Eric Holder and Associate Attorney General Tony West.**

   Response: During 2014 and through January 2015, I worked for the Department of Justice. From May 2014 to September 2014, I served as the Principal Deputy

Associate Attorney General under Associate Attorney General Tony West. From October 2014 to January 2015, I served as Counselor to the Attorney General under Attorney General Eric H. Holder, Jr. I left the Department in January 2015.

c. **On June 17, 2014, a senior counsel with the Department of Justice's Access to Justice Initiative emailed you and stated: "Cindy contacte[d] [redacted] yesterday about an issue that we've been discussing with Tony for months and one that we've been meaning to connect with you on [sic] adding language that incorporates legal aid into the Department's large bank settlement agreements (as part of consumer/victim relief)." Did you receive this email?**

Response: In general, as I noted earlier, the Department was focused on ensuring that consumer relief provisions were included in these settlements to help meaningfully and effectively rectify the complex, widespread, and nationwide harms stemming from the banks' acknowledged wrongdoing which led to the financial crisis—large numbers of homeowners severely underwater on their mortgages and many communities with large numbers of homeowners who had lost their homes, were severely underwater on their mortgages, or were so underwater on their mortgages that they had abandoned their homes—causing severe blight in many places.

Given the nature of these harms, the Department dedicated a portion of the consumer relief provisions to donation provisions which would redress the harms through specific activities such as foreclosure prevention legal assistance—given that so many Americans were at risk of foreclosure as a result of the banks' acknowledged wrongdoing.

d. **On June 23, 2014, you were the recipient of a memo titled "Including Legal Aid Organizations in Distribution of Bank Settlement Funds." The author's name has been publicly redacted. The memo indicated that it had compiled research on options for incorporating legal aid into the Department's large bank settlement agreements, and offered three recommendations that "best align with organizational capacity and litigation goals." Did you receive this memo?**

Response: In general, as I noted earlier, the Department was focused on ensuring that consumer relief provisions were included in these settlements to help meaningfully and effectively rectify the complex, widespread, and nationwide harms stemming from the banks' acknowledged wrongdoing which led to the financial crisis—large numbers of homeowners severely underwater on their mortgages and many communities with large numbers of homeowners who had lost their homes, were severely underwater on their mortgages, or were so underwater on their mortgages that they had abandoned their homes—causing severe blight in many places.

Given the nature of these harms, the Department dedicated a portion of the consumer relief provisions to donation provisions which would redress the harms through specific activities such as foreclosure prevention legal assistance—given that so many

Americans were at risk of foreclosure as a result of the banks' acknowledged wrongdoing.

With respect to the donation provisions concerning foreclosure prevention legal assistance, the donation provisions specified that neutral statewide intermediaries—namely each state's congressionally-authorized Interest on Lawyer Trust Account (IOLTA) Program or its state bar association-affiliated analog—would be responsible for directing funds to end recipients and vetting them. Each of the fifty states and the District of Columbia had a single congressionally-authorized Interest on Lawyer Trust Account (IOLTA) Program created by the state supreme court or the state legislature which provided grants for various charitable causes including civil legal assistance. Because these programs were known to be adept at directing funds and vetting recipients for civil legal assistance, the banks and the Department agreed that these programs—some of which were formally called "IOLTAs" and some of which went by another name but were state bar association-affiliated—would be the proper intermediaries for the donations concerning legal assistance. This was consistent with the Department's aim to ensure that each bank's efforts to redress the complex, nationwide, and widespread harm their admitted wrongdoing had done to American consumers and communities was meaningful and effective.

e. **On July 8, 2014, did you send the following email?**

Hi [redacted]

I think we are going to have to be as thin as possible here, not add new definitions, and not limit to particular states. What do you think about the following:

Donations to state-based interest on Lawyer's Trust Account (IOLTA) organizations or other statewide intermediaries that provide funds to legal aid organizations, to be used for foreclosure prevention assistance and community redevelopment assistance.

Regards,
Maame

Response: In general, as I noted earlier, the Department was focused on ensuring that consumer relief provisions were included in these settlements to help meaningfully and effectively rectify the complex, widespread, and nationwide harms stemming from the banks' acknowledged wrongdoing which led to the financial crisis—large numbers of homeowners severely underwater on their mortgages and many communities with large numbers of homeowners who had lost their homes, were severely underwater on their mortgages, or were so underwater on their mortgages that they had abandoned their homes—causing severe blight in many places.

Given the nature of these harms, the Department dedicated a portion of the consumer relief provisions to donation provisions which would redress the harms through

specific activities such as foreclosure prevention legal assistance—given that so many Americans were at risk of foreclosure as a result of the banks' acknowledged wrongdoing.

With respect to the donation provisions concerning foreclosure prevention legal assistance, the donation provisions specified that neutral statewide intermediaries—namely each state's congressionally-authorized Interest on Lawyer Trust Account (IOLTA) Program or its state bar association-affiliated analog—would be responsible for directing funds to end recipients and vetting them. Each of the fifty states and the District of Columbia had a single congressionally-authorized Interest on Lawyer Trust Account (IOLTA) Program created by the state supreme court or the state legislature which provided grants for various charitable causes including civil legal assistance. Because these programs were known to be adept at directing funds and vetting recipients for civil legal assistance, the banks and the Department agreed that these programs—some of which were formally called "IOLTAs" and some of which went by another name but were state bar association-affiliated—would be the proper intermediaries for the donations concerning legal assistance. This was consistent with the Department's aim to ensure that each bank's efforts to redress the complex, nationwide, and widespread harm their admitted wrongdoing had done to American consumers and communities was meaningful and effective.

f. On July 9, 2014, did you receive the following email in response?

Got it. Ok, this will hopefully address the concerns we'd like to avert:

Donations to state-based interest on Lawyers' Trust Account (IOLTA) organizations (or other statewide bar-association affiliated intermediaries) [sic] that provide funds to legal aid organizations, to be used for foreclosure prevention legal assistance and community redevelopment legal assistance.

Concerns include: a) not allowing Citi to pick a statewide intermediate like the Pacific Legal Foundation (does conservative property-rights free legal services) or a statewide pro bono entity (will conflict out of most meaningful foreclosure legal aid) [sic] we are more likely to get the right result from a state bar association affiliated entity; b) making sure it's legal assistance provided, not a scenario where the bank can direct IOLTA or other intermediary to give to even a legal aid organization but to do only housing counseling, for example, under the umbrella "foreclosure prevention assistance."

This get you closer?

Response: In general, as I noted earlier, the Department was focused on ensuring that consumer relief provisions were included in these settlements to help meaningfully and effectively rectify the complex, widespread, and nationwide harms stemming from the banks' acknowledged wrongdoing which led to the financial crisis—large numbers of homeowners severely underwater on their mortgages and many

communities with large numbers of homeowners who had lost their homes, were severely underwater on their mortgages, or were so underwater on their mortgages that they had abandoned their homes—causing severe blight in many places.

Given the nature of these harms, the Department dedicated a portion of the consumer relief provisions to donation provisions which would redress the harms through specific activities such as foreclosure prevention legal assistance—given that so many Americans were at risk of foreclosure as a result of the banks' acknowledged wrongdoing.

With respect to the donation provisions concerning foreclosure prevention legal assistance, the donation provisions specified that neutral statewide intermediaries—namely each state's congressionally-authorized Interest on Lawyer Trust Account (IOLTA) Program or its state bar association-affiliated analog—would be responsible for directing funds to end recipients and vetting them. Each of the fifty states and the District of Columbia had a single congressionally-authorized Interest on Lawyer Trust Account (IOLTA) Program created by the state supreme court or the state legislature which provided grants for various charitable causes including civil legal assistance. Because these programs were known to be adept at directing funds and vetting recipients for civil legal assistance, the banks and the Department agreed that these programs—some of which were formally called "IOLTAs" and some of which went by another name but were state bar association-affiliated—would be the proper intermediaries for the donations concerning legal assistance. This was consistent with the Department's aim to ensure that each bank's efforts to redress the complex, nationwide, and widespread harm their admitted wrongdoing had done to American consumers and communities was meaningful and effective.

g. Please confirm that you replied later that day to the same email "Cool. I will keep you posted."

Response: In general, as I noted earlier, the Department was focused on ensuring that consumer relief provisions were included in these settlements to help meaningfully and effectively rectify the complex, widespread, and nationwide harms stemming from the banks' acknowledged wrongdoing which led to the financial crisis—large numbers of homeowners severely underwater on their mortgages and many communities with large numbers of homeowners who had lost their homes, were severely underwater on their mortgages, or were so underwater on their mortgages that they had abandoned their homes—causing severe blight in many places.

Given the nature of these harms, the Department dedicated a portion of the consumer relief provisions to donation provisions which would redress the harms through specific activities such as housing counseling—given that so many Americans had lost their homes as a result of the banks' acknowledged wrongdoing—and foreclosure prevention legal assistance—given that so many Americans were at risk of foreclosure as a result of the banks' acknowledged wrongdoing.

h. Please confirm that you responded to the same email chain later that day, "We made the proposal. They had one question whenever you have a moment."

Response: In general, as I noted earlier, the Department was focused on ensuring that consumer relief provisions were included in these settlements to help meaningfully and effectively rectify the complex, widespread, and nationwide harms stemming from the banks' acknowledged wrongdoing which led to the financial crisis—large numbers of homeowners severely underwater on their mortgages and many communities with large numbers of homeowners who had lost their homes, were severely underwater on their mortgages, or were so underwater on their mortgages that they had abandoned their homes—causing severe blight in many places.

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i. On August 15, 2014, did you send the following email to Ellen Canale?

Hi Ellen

Here are some examples of consumer relief items that we believe require the banks to do more than they would be economically motivated to do on their own in Citi:

- **[redacted]**
- **[redacted]**
- **[redacted]**
- **Make donations to categories of entities we have specified (as opposed to what the bank might normally choose to donate to).**
- **[redacted]**
- **[redacted]**

I hope this is helpful. Let me know if you have questions or need more. Big picture, we are requiring the bank to change its behavior and at the very least, choose the actions we prefer among various options that it might be economically motivated to take. This in itself is valuable because we are pushing them to focus their activities on the borrowers and areas and relief of most concern to us that we believe will have the greatest impact in redressing the harm their actions caused to consumers and communities.

Thanks!
Maame

Response: In general, as I noted earlier, the Department was focused on ensuring that consumer relief provisions were included in these settlements to help meaningfully and effectively rectify the complex, widespread, and nationwide harms stemming from the banks' acknowledged wrongdoing which led to the financial crisis—large numbers of homeowners severely underwater on their mortgages and many communities with large numbers of homeowners who had lost their homes, were severely underwater on their mortgages, or were so underwater on their mortgages that they had abandoned their homes—causing severe blight in many places.

The settlement agreements did not specify the end recipients of any of the donation provisions, and the Department did not select any of the end recipients of the donation provisions. Because the purpose of the consumer relief provisions was to ensure that the banks made meaningful and effective efforts to redress the considerable harm their admitted wrongdoing had done to American consumers and communities, the donation provisions specified the redress activities to which the funds were to go.

In the case of some of the donation provisions, such as those concerning housing counseling, the donation provisions specified that the banks would select the end recipients from a list of agencies certified and vetted by the Department of Housing and Urban Development (HUD) as qualified to provide housing counseling.

In the case of some of the donation provisions, such as those concerning foreclosure prevention legal assistance, the donation provisions specified that neutral statewide intermediaries—namely each state's congressionally-authorized Interest on Lawyer Trust Account (IOLTA) Program or its state bar association-affiliated analog—would be responsible for directing funds to end recipients and vetting them. Each of the fifty states and the District of Columbia had a single congressionally-authorized Interest on Lawyer Trust Account (IOLTA) Program created by the state supreme court or the state legislature which provided grants for various charitable causes including civil legal assistance. Because these programs were known to be adept at directing funds and vetting recipients for civil legal assistance, the banks and the Department agreed that these programs—some of which were formally called "IOLTAs" and some of which went by another name but were state bar association-affiliated—would be the proper intermediaries for the donations concerning legal assistance. This was consistent with the Department's aim to ensure that each bank's efforts to redress the complex, nationwide, and widespread harm their admitted wrongdoing had done to American consumers and communities was meaningful and effective.

j. While at DOJ, did you participate in any activity that directly prevented aid or settlements from going to conservative-leaning groups?

Response: No. The Department did not discriminate against any third-party organization in these settlements on the basis of political leaning, involvement, or activity, and neither did I.

The Department believed that including consumer relief provisions in these settlements was critical to rectifying the harms that the banks had done through their packaging of defective mortgages into risky investments and lying to investors about those investments. According to the Department, this admitted wrongdoing had led to complex, widespread, and nationwide harms—large numbers of homeowners severely underwater on their mortgages and many communities with large numbers of homeowners who had lost their homes, were severely underwater on their mortgages, or were so underwater on their mortgages that they had abandoned their homes—leading to severe blight in many places.

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In the case of some of the donation provisions, such as those concerning housing counseling, the donation provisions specified that the banks would select the end recipients from a list of agencies certified and vetted by the Department of Housing and Urban Development (HUD) as qualified to provide housing counseling.

In the case of some of the donation provisions, such as those concerning foreclosure prevention legal assistance, the donation provisions specified that neutral statewide intermediaries—namely each state's congressionally-authorized Interest on Lawyer Trust Account (IOLTA) Program or its state bar association-affiliated analog—would be responsible for directing funds to end recipients and vetting them. Each of the fifty states and the District of Columbia had a single congressionally-authorized Interest on Lawyer Trust Account (IOLTA) Program created by the state supreme court or the state legislature which provided grants for various charitable causes including civil legal assistance. Because these programs were known to be adept at directing funds and vetting recipients for civil legal assistance, the banks and the Department agreed that these programs—some of which were formally called "IOLTAs" and some of which went by another name but were state bar association-affiliated—would be the proper intermediaries for the donations concerning legal assistance. This was consistent with the Department's aim to ensure that each bank's efforts to redress the complex, nationwide, and widespread harm their admitted wrongdoing had done to American consumers and communities was meaningful and effective.

k. What assurances can you offer to the American public that you will not operate with the same bias against organizations that are likely to appear before you in California, such as the Pacific Legal Foundation?

Response: I joined the Department of Justice as a career attorney under a Republican administration, and I served as a career attorney in both Republican and Democratic administrations. At no time while at the Department did I operate with any bias. I have not operated with any bias in my role as a Los Angeles Superior Court judge, and, if confirmed as a federal district court judge, I will not operate with any bias.

2. During the California Judges Association's conference in September 2020, you also facilitated a panel called "Judicial Independence and the Optics of Accountability." You expressed that you and another judge—both fairly new to the bench—were "surprised, when [you] got on the bench, how challenging it is . . . to remain impartial and to drown out the noise which . . . is deafening."

a. Why is it difficult for you to remain impartial on the bench?

Response: The panel referred to in the question concerned various ways that judges are believed to be held accountable in the public eye, such as through media criticism, judicial discipline, and judicial elections, specifically within the context of the state courts of California. As discussed during the panel, in the state courts of California, judges do not have life tenure, they must stand for re-election every six years, they are subject to recall nearly every year, and they are susceptible to peremptory challenge in every case—per California law, in every case, each side is entitled to exercise one peremptory challenge against the judge.

The panel addressed the fact that in light of this, some members of the public may seek to use media criticism, judicial discipline, and judicial elections, to influence judicial decisionmaking in an effort to "hold judges accountable" or "make judges more responsive to their constituents." My statement addressed the fact that this environment can weigh heavily on the judge who simply seeks to follow the law in every case, without fear or favor. In my five and a half years on the bench, it has been my experience that my colleagues and I work very hard to set aside any consideration of this environment when deciding the cases that come before us, and I have been successful in doing so at all times.

b. Please explain what the "noise" is that deafens you from the facts and law before you in any given case?

Response: The panel referred to in the question concerned various ways that judges are believed to be held accountable in the public eye, such as through media criticism, judicial discipline, and judicial elections, specifically within the context of the state courts of California. As discussed during the panel, in the state courts of California, judges do not have life tenure, they must stand for re-election every six years, they are subject to recall nearly every year, and they are susceptible to peremptory challenge

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

Response: If confirmed as a federal district court judge, I will handle only the cases and controversies that come before me, and it is imprudent for me to opine on what is appropriate for the executive to do. If presented with a case concerning a challenge to a political appointment on the basis that it was unconstitutional, I will hear from the parties, research the relevant law, make factual findings as appropriate, and apply the law to the facts consistent with binding precedent.

4. If you are to join the federal bench, and supervise along with your colleagues the court's human resources programs, will 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: I do not know what role, if any, federal district court judges play in supervising their courts' human resources programs. I would expect any training to be consistent with federal law, including federal anti-discrimination law.

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

Response: I do not know what role, if any, federal district court judges play in supervising their courts' human resources programs. I would expect any training to be consistent with federal law, including federal anti-discrimination law.

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

Response: I do not know what role, if any, federal district court judges play in supervising their courts' human resources programs. I would expect any training to be consistent with federal law, including federal anti-discrimination law.

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

Response: I do not know what role, if any, federal district court judges play in supervising their courts' human resources programs. I would expect any training to be consistent with federal law, including federal anti-discrimination law.

5. 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: I do not know what role, if any, federal district court judges play in supervising their courts' human resources programs. I would expect any training to be consistent with federal law, including federal anti-discrimination law.

6. Is the criminal justice system systemically racist?

Response: I understand that the term "systemic racism" has been used to refer to racial bias, racial disparities, and racial discrimination in the criminal justice system. In any case presenting questions of racial bias, racial disparities, and/or racial discrimination, I would hear from the parties, research the relevant law, make factual findings as appropriate, and apply the law to the facts consistent with binding precedent.

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

Response: Given the breadth of this question and in the absence of any context, and consistent with my obligations as a sitting judge and a judicial nominee to remain open-minded, fair, and impartial, and not prejudge any issue that might come before me, I am unable to opine on this question. If confirmed, in any case presenting this question, I will hear from the parties, research the relevant law, make factual findings as appropriate, and apply the law to the facts consistent with binding precedent.

8. 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: The Supreme Court stated in *Roman Catholic Diocese of Brooklyn v. Cuomo*, "The applicants have clearly established their entitlement to relief pending appellate review. They have shown that their First Amendment claims are likely to prevail, that

denying them relief would lead to irreparable injury, and that granting relief would not harm the public interest." 141 S. Ct. 63, 66 (2020). The Court also stated that "the [challenged] regulations cannot be viewed as neutral because they single out houses of worship for especially harsh treatment." *Id.* at 66.

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

Response: I understand the Supreme Court's holding in *Tandon v. Newsom*, 141 S. Ct. 1294 (2021), to have four elements: (1) governmental regulations are not neutral and generally applicable—and they therefore trigger strict scrutiny—whenever they treat any comparable secular activity more favorably than religious exercise; (2) the question of whether a secular activity is "comparable" to religious exercise is determined with reference to the asserted government interest in the regulation; (3) the government bears the burden of showing that the regulation is narrowly tailored—namely, that there is not a less restrictive means of achieving the asserted government interest; and (4) the rescinding of COVID-19 restrictions does not moot a case challenging such restrictions.

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

Response: Yes.

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

Response: The Supreme Court has stated, "At a minimum, the protections of the Free Exercise Clause pertain if the law at issue discriminates against some or all religious beliefs or regulates or prohibits conduct because it is undertaken for religious reasons." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 532 (1993). Any such Free Exercise claims are to be evaluated under strict scrutiny. *See Tandon v. Newsom*, 141 S. Ct. 1294 (2021). If confirmed, in any case raising this issue, I will hear from the parties, research the relevant law, make factual findings as appropriate, and apply the law to the facts consistent with binding precedent.

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

Response: As a sitting judge, it is improper for me to weigh in on policy matters, such as what is appropriate for the executive to do. If confirmed as a district court judge, I would handle only the cases and controversies that come before me, and it would be imprudent for me to opine on what is appropriate for the executive to do.

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

Response: I am unaware of any Supreme Court or Ninth Circuit precedent that definitively answers this question, and this issue has not come before me as a Los Angeles Superior Court judge. As a sitting judge and a judicial nominee, I do not wish to prejudge any issue that might come before me. If confirmed as a federal district court judge and faced with a case or controversy raising this question, I will hear from the parties, research the relevant law, make factual findings as appropriate, and apply the law to the facts as dictated by binding precedent.

14. Describe how you would characterize your judicial philosophy on the bench in California thus far, and identify which U.S. Supreme Court Justice's philosophy out of the Warren, Burger, Rehnquist, and Roberts Courts is most analogous with yours.

Response: I would describe my judicial philosophy as follows: (1) every person who enters my courtroom is entitled to be treated with dignity and respect; (2) as a criminal court judge, I must remain mindful that every case implicates the principles of liberty and justice for all; and (3) as a trial court judge, my role is limited to deciding cases and controversies that come before me based upon the rule of law—that is, binding precedent, applicable law, and facts supported by evidence. I have not studied the judicial philosophies of the named Justices and therefore could not identify which one is most analogous to my own.

15. Please briefly describe the interpretative method known as originalism.

Response: Black's Law Dictionary (11th ed. 2019) defines the doctrine of originalism as follows: "1. The doctrine that words of a legal instrument are to be given the meanings they had when they were adopted; specif., the canon that a legal text should be interpreted through the historical ascertainment of the meaning that it would have conveyed to a fully informed observer at the time when the text first took effect. . . . . 2. The doctrine that a legal instrument should be interpreted to effectuate the intent of those who prepared it or made it legally binding."

16. Please briefly describe the interpretive method often referred to as living constitutionalism.

Response: Black's Law Dictionary (11th ed. 2019) defines the doctrine of living constitutionalism as follows: "The doctrine that the Constitution should be interpreted and applied in accordance with changing circumstances and, in particular, with changes in social values. While many authorities use the terms living constitutionalism and nonoriginalism interchangeably, others view living constitutionalism as a form of nonoriginalism that values interpretive conformity with changed circumstances and norms more greatly than do other forms of nonoriginalism."

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

Response: No.

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

Response: As a sitting judge and a judicial nominee, it is not for me to opine on what Congress should do.

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

Response: Yes. The Supreme Court has held that the right set forth in the Second Amendment is an individual right. *District of Columbia v. Heller*, 554 U.S. 570 (2008).

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

Response: No.

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

Response: No.

22. Does the President have the authority to abolish the death penalty?

Response: It is my understanding that the federal death penalty is codified at 18 U.S.C. § 3591 for specified federal crimes. Generally speaking, it would require an act of Congress for the sentence of death to no longer be available for these crimes. The President does, however, have the power to pardon individuals charged with federal crimes and to commute the sentences of individuals sentenced for federal crimes.

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

Response: The Supreme Court stated in *Alabama Ass'n of Realtors v. Department of Health & Human Services*, "The Director of the Centers for Disease Control and Prevention (CDC) has imposed a nationwide moratorium on evictions of any tenants who live in a county that is experiencing substantial or high levels of COVID–19 transmission and who make certain declarations of financial need. 86 Fed. Reg. 43244 (2021). . . . And careful review of [the] record makes clear that the applicants are virtually certain to succeed on the merits of their argument that the CDC has exceeded its authority [under § 361(a) of the Public Health Service Act, 42 U.S.C. § 264(a)]." 141 S. Ct. 2485, 2486 (2021).

24. Do you believe that unlawfully setting a building on fire, amidst general rioting, is a violent act?

Response: As a Los Angeles Superior Court judge, I set aside any personal beliefs when handling the cases and controversies that come before me. If confirmed as a district court judge, in any case raising this question, I will hear from the parties, research the relevant law, make factual findings as appropriate, and apply the law to the facts as dictated by binding precedent.

25. Are students accused of sexual misconduct entitled to due process?

Response: Given the breadth of this question and in the absence of any context, and consistent with my obligations as a sitting judge and a judicial nominee to remain open-minded, fair, and impartial, and not pre-judge any issue that might come before me, I am unable to opine on this question. If confirmed, in any case presenting the issues raised by this question, I will hear from the parties, research the relevant law, make factual findings as appropriate, and apply the law to the facts consistent with binding precedent.

26. In *Carpenter v. United States*, what criteria did the U.S. Supreme Court use to distinguish between phenomena that are covered by the Fourth Amendment Third Party Doctrine and those that are not?

Response: The Supreme Court stated, "Although no single rubric definitively resolves which expectations of privacy are entitled to protection, the analysis is informed by historical understandings 'of what was deemed an unreasonable search and seizure when [the Fourth Amendment] was adopted.'" *Carpenter v. United States*, 138 S. Ct. 2206, 2213–14 (2018) (quoting *Carroll v. United States*, 267 U.S. 132, 149, 45 (1925)).

27. Do Americans have a privacy interest in their financial affairs?

Response: Given the breadth of this question and in the absence of any context, and consistent with my obligations as a sitting judge and a judicial nominee to remain open-minded, fair, and impartial, and not pre-judge any issue that might come before me, I am unable to opine on this question. I will note that that it may implicate authority as diverse as the Right to Financial Privacy Act, 12 U.S.C. §§ 3401-3423 and the Supreme Court's decisions in *United States v. Miller*, 425 U.S. 435 (1976) and *Seattle Times Co. v. Rhinehart*, 467 U.S. 20 (1984). If presented with a case concerning this question, I would hear from the parties, research the relevant law, make factual findings as appropriate, and apply the law to the facts consistent with binding precedent.

28. Are there any limitations on the Third Party Doctrine as applied to an individual's banking records? What are they?

Response: In *United States v. Miller*, 425 U.S. 435 (1976), the Supreme Court established the Third Party Doctrine with respect to an individual's banking records. If confirmed and presented with a case concerning the limits of this doctrine, I will hear from the parties, research the law, make factual findings as appropriate, and apply the law to the facts consistent with binding precedent.

29. In *Americans for Prosperity Foundation v. Bonta,* the Court majority ruled that California's disclosure requirement was facially invalid because it burdens donors' First Amendment rights to freedom of association. However, the majority was evenly split as to which standard of scrutiny should apply to such cases. Please explain your understanding of the two major arguments, and which of the two standards an appellate judge is bound to apply?

Response: The Supreme Court stated in *Americans for Prosperity Foundation v. Bonta*, "We are left to conclude that the Attorney General's disclosure requirement imposes a widespread burden on donors' associational rights. And this burden cannot be justified on the ground that the regime is narrowly tailored to investigating charitable wrongdoing, or that the State's interest in administrative convenience is sufficiently important. We therefore hold that the up-front collection of Schedule Bs is facially unconstitutional, because it fails exacting scrutiny in 'a substantial number of its applications . . . judged in relation to [its] plainly legitimate sweep.'" 141 S. Ct. 2373, 2389 (2021) (quoting *United States v. Stevens*, 559 U.S. 460, 473 (2010) (quotation marks omitted)).

The opinion authored by Chief Justice Roberts states, "Regardless of the type of association, compelled disclosure requirements are reviewed under exacting scrutiny." *Americans for Prosperity Found. v. Bonta*, 141 S. Ct. at 2383. The concurring opinion authorized by Justice Thomas states, "Laws directly burdening the right to associate anonymously, including compelled disclosure laws, should be subject to the same scrutiny as laws directly burdening other First Amendment rights [namely, strict scrutiny]." *Id.* at 2390.

If confirmed as a federal district court judge, in any case raising the question of which standard to apply, I will hear from the parties, research the law, make factual findings as appropriate, and apply the law to the facts consistent with binding precedent.

30. Please explain your understanding of the Supreme Court's holding and rationale in *Apple v. Pepper*. How does it reconcile with *Illinois Brick*?

Response: The Supreme Court described its holding in *Apple v. Pepper* as follows: "We merely hold that the *Illinois Brick* direct-purchaser rule does not bar these plaintiffs from suing Apple under the antitrust laws." *Apple Inc. v. Pepper*, 139 S. Ct. 1514, 1519 (2019). It described its rationale and reconciled it with *Illinois Brick* in the following way: "It is undisputed that the iPhone owners bought the apps directly from Apple. Therefore, under *Illinois Brick*, the iPhone owners were direct purchasers who may sue Apple for alleged monopolization. That straightforward conclusion follows from the text of the antitrust laws and from our precedents." *Apple Inc. v. Pepper*, 139 S. Ct. at 1520.

31. 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. Please explain the Court's holding in the case.

Response: The Supreme Court stated, in *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1882 (2021), "The refusal of Philadelphia to contract with [Catholic Social Services] for the provision of foster care services unless it agrees to certify same-sex couples as foster parents cannot survive strict scrutiny, and violates the First Amendment."

32. Please explain the Supreme Court's holding and rationale in *Associated Press v. United States*.

Response: The Supreme Court described its holding and rationale in *Associated Press v. United States* in the following way:

> For the court below found, and we think correctly, that the [Associated Press (AP) member] By-Laws on their face, and without regard to their past effect, constitute restraints of trade. Combinations are no less unlawful because they have not as yet resulted in restraint. An agreement or combination to follow a course of conduct which will necessarily restrain or monopolize a part of trade or commerce may violate the Sherman Act, whether it be wholly nascent or abortive on the one hand, or successful on the other. For these reasons the argument, repeated here in various forms, that AP had not yet achieved a complete monopoly is wholly irrelevant. Undisputed evidence did show, however, that its By-Laws had tied the hands of all of its numerous publishers, to the extent that they could not and did not sell any part of their news so that it could reach any of their non-member competitors. In this respect the Court did find, and that finding cannot possibly be challenged, that AP's By-Laws had hindered and restrained the sale of interstate news to non-members who competed with members.

Associated Press v. United States, 326 U.S. 1, 12–13 (1945) (quotation marks and citations omitted).

33. Should courts place significant weight on underlying First Amendment considerations when making antitrust determinations relating to the dissemination of information to the public, as the *Associated Press* majority suggests?

Response: In *Associated Press v. United States*, the Court discussed the First Amendment and stated, in part, "The First Amendment affords not the slightest support for the contention that a combination to restrain trade in news and views has any constitutional immunity." *Associated Press v. United States*, 326 U.S. 1, 20 (1945). If confirmed, and were I to be presented with an antitrust case concerning the dissemination of information to the public, I would hear from the parties with respect to the weight to be placed on any underlying First Amendment considerations, research the relevant law, make factual findings as appropriate, and apply the law to the facts consistent with binding precedent.

Senator Josh Hawley
Questions for the Record

Judge Maame Ewusi-Mensah Frimpong
Nominee, U.S. District Court for the Central District of California

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

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

    Response: Because I am not familiar with that statement or the context in which it was made, I am not in a position to state whether or not I agree with Justice Thurgood Marshall's judicial philosophy.

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

    Response: Because I am not familiar with that statement or the context in which it was made, I am unable to opine on whether Justice Thurgood Marshall's judicial philosophy is a violation of the judicial oath.

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

Response: Pursuant to the *Younger* abstention doctrine, federal courts abstain from interfering in state court proceedings where those proceedings: (1) are pending at the time of filing; (2) implicate important state interests; and (3) provide an adequate opportunity for raising federal claims. *See Younger v. Harris*, 401 U.S. 37, 49-53 (1971).

Pursuant to the *Pullman* abstention doctrine, federal courts abstain from addressing federal issues where those issues depend on the resolution of unresolved state law questions. *See Railroad Comm'n of Texas v. Pullman Co*., 312 U.S. 496 (1941).

Pursuant to the *Colorado River* abstention doctrine, federal courts abstain from deciding a case raising a federal law question where a pending state court proceeding concerns identical issues. *See Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800 (1976).

Pursuant to the *Burford* abstention doctrine, federal courts abstain from deciding a case where the following criteria are met: "first, that the state has chosen to concentrate suits challenging the actions of the agency involved in a particular court; second, that federal issues could not be separated easily from complex state law issues with respect to which state courts might have special competence; and third, that federal review might disrupt state efforts to establish a coherent policy." *Knudsen Corp. v. Nevada State Dairy*

Comm'n, 676 F.2d 374, 377 (9th Cir. 1982). *See Burford v. Sun Oil Co*., 319 U.S. 315 (1943).

Pursuant to the *Thibodaux* abstention doctrine, federal courts abstain in cases involving unresolved state law questions where the proceedings are "intimately involved with the sovereign prerogative" of the state. *See Louisiana Power & Light Co. v. City of Thibodaux*, 360 U.S. 25 (1959).

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

Response: As an attorney, my focus was on zealously representing my clients' interests within the bounds of the law, not on developing personal views with respect to the positions that it was in their best interests to take.

a. How did you handle the situation?

Response: As an attorney, my focus was on zealously representing my clients' interests within the bounds of the law, not on developing personal views with respect to the positions that it was in their best interests to take.

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

Response: Yes.

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

Response: No.

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

Response: Not applicable.

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

Response: What I do as a sitting Los Angeles Superior Court judge, and what I will do if confirmed as a federal district court judge, is apply precedent when interpreting the Constitution. If confirmed, in any case where I am called upon to interpret a Constitutional provision, I will look to binding precedent to determine what role original public meaning or any other factor should play.

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

   Response: What I do as a sitting Los Angeles Superior Court judge, and what I will do if confirmed as a federal district court judge, is apply precedent when interpreting legal texts. If confirmed, in any case where I am called upon to interpret a legal text, I will look to binding precedent to determine what role legislative history and other factors should play. In general, precedent dictates that the interpretation of a legal text begins with the text itself and ends with the text itself where that text is clear and unambiguous.

   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: What I do as a sitting Los Angeles Superior Court judge, and what I will do if confirmed as a federal district court judge, is apply precedent when interpreting legal texts. If confirmed, in any case where I am called upon to interpret a legal text, I will look to binding precedent to determine how various forms of legislative history should be treated.

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

      Response: What I do as a sitting Los Angeles Superior Court judge, and what I will do if confirmed as a federal district court judge, is apply precedent when interpreting the Constitution. If confirmed, in any case where I am called upon to interpret a Constitutional provision, I will look to binding precedent to determine whether it is appropriate to consult the laws of foreign nations.

7. **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 Ninth Circuit Court of Appeals, in reliance upon Supreme Court precedent, has stated, "To prevail on an Eighth Amendment claim 'there must be a substantial risk of serious harm, an objectively intolerable risk of harm that prevents prison officials from pleading that they were subjectively blameless for purposes of the Eighth Amendment.'" *Lopez v. Brewer*, 680 F.3d 1068, 1073 (9th Cir. 2012) (quoting *Baze v. Rees*, 553 U.S. 35, 50 (2008)).

8. **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: To the extent that this question concerns the Supreme Court's holding in *Glossip v. Gross*, 135 S. Ct. 2726, 2731 (2015), the response is Yes.

9. 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: Not to my knowledge. In *District Attorney's Office for the Third Judicial Disrict. v. Osborne*, 557 U.S. 52, 72 (2009), the Supreme Court stated, "[The plaintiff] asks that we recognize a freestanding right to DNA evidence untethered from the liberty interests he hopes to vindicate with it. We reject the invitation and conclude, in the circumstances of this case, that there is no such substantive due process right."

10. 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.

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 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 stated that "government regulations are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat any comparable secular activity more favorably than religious exercise." *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021). *See also* Religious Freedom Restoration Act of 1993 (RFRA), 42 U.S.C. § 2000bb-1; Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C. § 2000cc-1(a); *Church of Lukumi Babalu Aye, Inc., v. City of Hialeah*, 508 U.S. 520 (1993); *Emp. Div., Dep't of Hum. Res. of Oregon v. Smith*, 494 U.S. 872, 878 (1990). If confirmed, in any case raising this issue, I will hear from the parties, research the law, make factual findings as appropriate, and apply the law consistent with binding precedent.

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

Response: The Supreme Court has stated, "At a minimum, the protections of the Free Exercise Clause pertain if the law at issue discriminates against some or all religious beliefs or regulates or prohibits conduct because it is undertaken for religious reasons." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 532 (1993).

The Supreme Court has also stated, "Although a law targeting religious beliefs as such is never permissible, if the object of a law is to infringe upon or restrict practices because of

their religious motivation, the law is not neutral . . . ." *Id.* at 533 (quotation marks and citations omitted). In addition, "Facial neutrality is not determinative. The Free Exercise Clause, like the Establishment Clause, extends beyond facial discrimination. The Clause forbids subtle departures from neutrality, and covert suppression of particular religious beliefs. Official action that targets religious conduct for distinctive treatment cannot be shielded by mere compliance with the requirement of facial neutrality. The Free Exercise Clause protects against governmental hostility which is masked, as well as overt." *Id.* at 534.

In any case raising this issue, I will hear from the parties, research the law, make factual findings as appropriate, and apply the law consistent with binding precedent.

13. 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: With respect to this issue, the Supreme Court has stated, "[I]t is not for us to say that [the plaintiffs'] religious beliefs are mistaken or insubstantial. Instead, our narrow function . . . in this context is to determine whether the line drawn reflects an honest conviction . . . ." *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 725 (2014) (quotation marks and citations omitted). S*ee also Masterpiece Cakeshop, Ltd. v. Colorado C.R. Comm'n*, 138 S. Ct. 1719, 1729 (2018). The Ninth Circuit Court of Appeals has stated that, in First Amendment cases, "the claimant's proffered belief must be sincerely held; the First Amendment does not extend to 'so-called religions which . . . are obviously shams and absurdities and whose members are patently devoid of religious sincerity.'" *Callahan v. Woods*, 658 F.2d 679, 683 (9th Cir. 1981) (quoting *Theriault v. Carlson*, 495 F.2d 390, 395 (5th Cir. 1974), cert. denied, 419 U.S. 1003 (1974)). If confirmed as a federal district court judge, in any case raising this issue, I will hear from the parties, research the law, make factual findings as appropriate, and apply the law consistent with binding precedent.

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

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

Response: The Supreme Court held in *District of Columbia v. Heller* that the Second Amendment protects "an individual right to possess a firearm unconnected with service in a militia, and to use that arm for traditionally lawful purposes, such as self-defense within the home." 554 U.S. 570, 577 (2008).

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.

15. 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 am not familiar with the full context in which that statement was made. It is my understanding that *Lochner v. New York* has largely been overruled and is therefore no longer binding precedent.

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

Response: As a sitting judge on the Los Angeles Superior Court, and now a nominee for the federal district court, it is generally not for me to opine on the correctness of binding precedent in light of my duty to apply any and all binding precedent and to remain fair, open-minded, and impartial in every case. It is my understanding that *Lochner v. New York* has largely been overruled and is therefore no longer binding precedent.

16. 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: The Supreme Court stated, "*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.'" *Trump v. Hawaii*, 138 S. Ct. 2392, 2423 (2018) (citing *Korematsu v. United States*, 323 U.S. at 248 (Jackson, J., dissenting)). My understanding of that phrase is consistent with its plain meaning in this context.

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

Response: No.

a. If so, what are they?

Response: Not applicable.

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

Response: Yes.

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

a. Do you agree with Judge Learned Hand?

Response: I am not familiar with the full context in which that statement was made, and it is not my role as a lower court judge to agree or disagree with pronouncements of the Supreme Court. If confirmed as a federal district court judge, in any case raising questions regarding market share, I will hear from the parties, research the law, make factual findings as appropriate, and apply the law to the facts consistent with binding precedent.

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

Response: Not applicable.

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: As a sitting judge, and as a judicial nominee, I am unable to prejudge any issue that might come before me. If confirmed as a federal district court judge, in any case raising questions regarding market share, I will hear from the parties, research the law, make factual findings as appropriate, and apply the law to the facts consistent with binding precedent.

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

Response: Black's Law Dictionary (11th ed. 2019) defines federal common law as follows: "The body of decisional law derived from federal courts when adjudicating federal questions and other matters of federal concern, such as disputes between the states and foreign relations, but excluding all cases governed by state law." This comports with my understanding.

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

Response: As a sitting state judge, I am governed by binding precedent when interpreting provisions of my state's constitution. If confirmed as a federal district court judge, I would be guided by binding precedent, including applicable abstention and deference doctrines, in interpreting a state constitutional provision. *See Espinoza v.*

Montana Dep't of Revenue, 140 S. Ct. 2246, 2254 (2020). If confirmed, in any case raising these issues, I will hear from the parties, research the law, make factual findings as appropriate, and apply the law to the facts consistent with binding precedent, including any applicable abstention and deference doctrines.

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

Response: As a sitting state judge, I am governed by binding precedent when interpreting provisions of my state's constitution. If confirmed as a federal district court judge, I would be guided by binding precedent, including applicable abstention and deference doctrines, in interpreting a state constitutional provision. *See Espinoza v. Montana Dep't of Revenue*, 140 S. Ct. 2246, 2254 (2020). If confirmed, in any case raising these issues, I will hear from the parties, research the law, make factual findings as appropriate, and apply the law to the facts consistent with binding precedent, including any applicable abstention and deference doctrines.

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

Response: I am unable to respond to this question in the abstract without reference to any specific provisions, but it is certainly possible that a state constitutional provision might provide greater protections than an analogous federal constitutional provision. If confirmed as a federal district court judge, in any case raising these issues, I will hear from the parties, research the law, make factual findings as appropriate, and apply the law to the facts consistent with binding precedent, including any applicable abstention and deference doctrines.

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

Response: As a sitting judge on the Los Angeles Superior Court, and now a nominee for the federal district court, it is generally not for me to opine on the correctness of binding precedent in light of my duty to apply any and all binding precedent and to remain fair, open-minded, and impartial in every case. I agree with prior judicial nominees, however, that *Marbury v. Madison*, *Brown v. Board of Education*, and *Loving v. Virginia* establish foundational principles unlikely to be tested in any case to come before me and were correctly decided.

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

Response: Yes. *See, e.g., Trump v. International Refugee Assistance Project*, 137 S. Ct. 2080, 2088–89 (2017) (upholding nationwide injunction); *Dep't of Commerce v. U.S. House of Representatives*, 525 U.S. 316, 343–44 (1999) (upholding nationwide injunction). If confirmed as a federal district court judge, in any case raising this issue, I

will hear from the parties, research the law, make factual findings as appropriate, and apply the law consistent with binding precedent.

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

Response: In *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979), the Supreme Court stated that "injunctive relief should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs."

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

Response: In *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979), the Supreme Court stated that "injunctive relief should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs." If confirmed as a federal district court judge, in any case raising this issue, I will hear from the parties, research the law, make factual findings as appropriate, and apply the law consistent with binding precedent.

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

Response: In *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979), the Supreme Court stated that "injunctive relief should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs." In any case raising this issue, I would hear from the parties, research the law, make factual findings as appropriate, and apply the law consistent with binding precedent.

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

Response: Black's Law Dictionary (11th ed. 2019) defines federalism as follows: "The legal relationship and distribution of power between the national and regional governments within a federal system of government, and in the United States particularly, between the federal government and the state governments." This foundational relationship plays a critical role in our constitutional system.

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

Response: Please see my answer to Question 2 above, outlining a number of abstention doctrines that apply to federal courts.

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

Response: If confirmed as a federal district court judge, in any case raising these issues, I will hear from the parties as to the requested relief, research the law, make factual findings as appropriate, and apply the law to the facts consistent with binding precedent.

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

Response: The Supreme Court has stated that substantive due process protects those fundamental rights which are comprised within the term "liberty" in the Fourteenth Amendment. *See Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 847 (1992).

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

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

Response: As a sitting judge on the Los Angeles Superior Court and, if confirmed, as a federal district court judge, I follow any and all binding precedent regarding the scope of this First Amendment right.

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 used both "the free exercise of religion" and "the freedom of worship" to characterize what is protected by the Free Exercise clause of the First Amendment. *Compare Lee v. Weisman*, 505 U.S. 577, 591 (1992) ("freedom of worship") *and West Virginia State Board of Ed. v. Barnette*, 319 U.S. 624, 638 (1943) ("freedom of worship") *with McDaniel v. Paty*, 435 U.S. 618, 620 (1978) ("free exercise of religion") *and Trinity Lutheran Church of Columbia v. Comer*, 137 S. Ct. 2012, 2019 ("free exercise of religion").

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: The Supreme Court has stated that "government regulations are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat any comparable secular activity more favorably than religious exercise." *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021). *See also* Religious Freedom Restoration Act of 1993 (RFRA), 42 U.S.C. § 2000bb; Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C. § 2000cc-1(a); *Church of Lukumi Babalu Aye, Inc., v. City of Hialeah*, 508 U.S. 520 (1993); *Emp. Div., Dep't of Hum. Res. of Oregon v.*

Smith, 494 U.S. 872, 878 (1990). If confirmed as a federal district court judge, in any case raising this issue, I will hear from the parties, research the law, make factual findings as appropriate, and apply the law consistent with binding precedent.

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

Response: With respect to this issue, the Supreme Court has stated, "[I]t is not for us to say that [the plaintiffs'] religious beliefs are mistaken or insubstantial. Instead, our narrow function . . . in this context is to determine whether the line drawn reflects an honest conviction . . . ." *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 725 (2014) (quotation marks and citations omitted). S*ee also Masterpiece Cakeshop, Ltd. v. Colorado C.R. Comm'n*, 138 S. Ct. 1719, 1729 (2018). The Ninth Circuit Court of Appeals has stated that, in First Amendment cases, "the claimant's proffered belief must be sincerely held; the First Amendment does not extend to 'so-called religions which . . . are obviously shams and absurdities and whose members are patently devoid of religious sincerity.'" *Callahan v. Woods*, 658 F.2d 679, 683 (9th Cir. 1981) (quoting *Theriault v. Carlson*, 495 F.2d 390, 395 (5th Cir. 1974), cert. denied, 419 U.S. 1003 (1974)). If confirmed as a federal district court judge, in any case raising this issue, I will hear from the parties, research the law, make factual findings as appropriate, and apply the law consistent with binding precedent.

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: As a sitting judge, and if confirmed, as a federal district court judge, I decide only the cases and controversies that come before me, with reference to the arguments made by the parties and in accordance with binding precedent. If any case were to come before me presenting questions regarding the relationship between the Religious Freedom Restoration Act and other federal laws, I would hear from the parties, research the law, make appropriate factual findings, and apply the law consistent with binding precedent.

f. Have you ever issued a judicial opinion, order, or other decision adjudicating a claim under the Religious Freedom Restoration Act, the Religious Land use and Institutionalized 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.

29. 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: I am unaware of any precedent setting forth a numerical answer to the question of guilt beyond a reasonable doubt. As a sitting state court judge, I am bound by state precedent that holds it is improper to attempt to quantify the reasonable doubt standard. As a federal district court judge, I would be bound by any precedent governing this question.

30. 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"?

Response: As a sitting judge and judicial nominee, I am unable to prejudge any issue that might come before me, such as the one presented by this question. As a federal district court judge, I would be bound by any precedent governing this question. If confirmed, in any case raising this issue, I will hear from the parties, research the law, make factual findings as appropriate, and apply the law consistent with binding precedent.

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"?

Response: As a sitting judge and judicial nominee, I am unable to prejudge any issue that might come before me, such as the one presented by this question. As a federal district court judge, I would be bound by any precedent governing this question. If confirmed, in any case raising this issue, I will hear from the parties, research the law, make factual findings as appropriate, and apply the law consistent with binding precedent.

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

Response: As a sitting judge and judicial nominee, I am unable to prejudge any issue that might come before me, such as the one presented by this series of questions. As a federal district court judge, I would be bound by any precedent governing this series of questions. If confirmed, in any case raising these issues, I

will hear from the parties, research the law, make factual findings as appropriate, and apply the law consistent with binding precedent.

31. 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?

Response: My decisions as a sitting Los Angeles Superior Court judge do not have precedential value, and if confirmed, my decisions as a federal district court judge, will also not have precedential value whether or not "published." As a lower court judge, it is not my role to determine what precedential value the opinions of the higher courts should have. I am bound to follow any and all binding precedent.

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

Response: As a lower court judge, it is not my role to determine what precedential value the opinions of the higher courts should have. I am bound to follow any and all binding precedent.

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

Response: If confirmed, I will follow circuit precedent and applicable rules with respect to the weight to be given to unpublished decisions. It is my understanding that, in the Ninth Circuit, unpublished decisions are not to be treated as precedential.

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

Response: If confirmed as a federal district court judge, the rule of law dictates that I am bound by my circuit precedent and applicable rules.

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

Response: If confirmed as a federal district court judge, I will be bound by my circuit precedent and applicable rules with respect to the weight to be given to unpublished decisions. It is my understanding that, in the Ninth Circuit, unpublished decisions may be considered for their persuasive authority.

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.

Response: If confirmed, I will study the circuit precedent and applicable rules and confer with colleagues before determining whether and how to address the citation of unpublished opinions by litigants.

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: If confirmed, I will study the circuit precedent and applicable rules and confer with colleagues before determining whether and how to address the citation of unpublished opinions by litigants.

32. In your legal career:

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

Response: One.

b. How many have you tried as second chair?

Response: I was co-counsel at the hearing in three international arbitration matters. For the most part, these were conducted much like trials, with opening and closing statements and the taking of evidence (including expert testimony) before a factfinder over a number of days.

c. How many depositions have you taken?

Response: I would estimate 15-20.

d. How many depositions have you defended?

Response: I would estimate 5-10.

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

Response: I would estimate 5-10.

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: Once, as an attorney at the U.S. Department of Justice representing the United States.

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

Response: I would estimate 3-5.

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

Response: I would estimate 3-5.

33. 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: I was last required to track billable hours when I was a law firm associate in 2007. I do not recall the maximum number of hours that I billed in a single year.

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

Response: I would estimate that at various points, 10-20% of my billable hours were dedicated to pro bono work.

34. 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 am not familiar with this statement or the context in which it was made. What I do as a sitting Los Angeles Superior Court judge, and what I would do if confirmed as a federal district court judge, is decide the cases and controversies that come before me based solely on the law, and not based upon whether I like or dislike the result that the law dictates.

35. 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?

Response: I am not familiar with this statement or the context in which it was made. I understand that my role as a Los Angeles Superior Court judge, and, if confirmed, as a federal district court judge, is to apply the law as established by the Constitution, statute, and binding precedent in the specific cases and controversies that come before me.

b. Do you agree or disagree with this statement?

Response: I understand that my role as a Los Angeles Superior Court judge, and, if confirmed, as a federal district court judge, is to apply the law as established by the Constitution, statute, and binding precedent in the specific cases and controversies that come before me.

36. 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?

Response: I am not familiar with this statement or the context in which it was made. I understand that my role as a Los Angeles Superior Court judge, and, if confirmed, as a federal district court judge, is to apply the law as established by the Constitution, statute, and binding precedent in the specific cases and controversies that come before me.

b. Do you agree or disagree with Justice Holmes? Please explain.

Response: I am not familiar with this statement or the context in which it was made. I understand that my role as a Los Angeles Superior Court judge, and, if confirmed, as a federal district court judge, is to apply the law as established by the Constitution, statute, and binding precedent in the specific cases and controversies that come before me.

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

Response: No.

a. If yes, please provide appropriate citations.

Response: Not applicable.

38. 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.

39. What were the last three books you read?

Response: ELIOT BROWN AND MAUREEN FARRELL, THE CULT OF WE: WEWORK, ADAM NEUMANN, AND THE GREAT STARTUP DELUSION (2021); RUPI KAUR, HOME BODY (2020); NADIA BOLZ-WEBER, PASTRIX: THE CRANKY, BEAUTIFUL FAITH OF A SINNER & SAINT (2013).

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

Response: I understand that the term "systemic racism" has been used to refer to racial bias, racial disparities, and racial discrimination in the criminal justice system. In any case presenting questions of racial bias, racial disparities, and/or racial discrimination, I would hear from the parties, research the law, make factual findings as appropriate, and apply the law to the facts consistent with binding precedent.

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

Response: The process of seeking this nomination and preparing for my confirmation hearing required me to review the entirety of my career as an attorney and as a judge. I am proud of my entire body of work to date as an attorney and as a judge.

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

Response: As a sitting judge, I tend to read legislation, judicial opinions, and legal treatises, rather than law review articles.

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

Response: I do not believe any particular Federalist Paper has most shaped my view of the law, but taken as a whole, the Federalist Papers have shaped my view that our system of government was the result of extensive consideration and debate by the founders and is not to be taken for granted.

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

Response: As a sitting judge, when a case comes before me, I keep my mind open until I hear from the parties, research the law, make appropriate factual findings, and apply the law to the facts consistent with binding precedent.

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

Response: As a sitting judge and a nominee for the federal district court, it would be imprudent for me to opine on this question, as it is the subject both of public debate as well as cases that may come before me.

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: I believe that I testified under oath in a small claims matter to which I was a party.

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?

Response: No.

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

Response: Not applicable.

50. Have you ever confessed error to a court?

Response: No.

a. If so, please describe the circumstances.

Response: Not applicable.

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: Nominees owe a duty of candor and must tell the truth as to all matters when testifying under oath before the Senate Judiciary Committee.

Questions for the Record for Maame Ewusi-Mensah Frimpong
From Senator Mazie K. Hirono

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

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

      Response: No.

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

      Response: No.

Senator Ben Sasse
Questions for the Record
U.S. Senate Committee on the Judiciary
Hearing: "Nominations"
October 20, 2021

Questions for all nominees:

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

   Response: No.

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

   Response: No.

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

   Response: I would describe my judicial philosophy as follows: (1) every person who enters my courtroom is entitled to be treated with dignity and respect; (2) as a criminal court judge, I must remain mindful that every case implicates the principles of liberty and justice for all; and (3) as a trial court judge, my role is limited to deciding cases and controversies that come before me based upon the rule of law—that is, binding precedent, applicable law, and facts supported by evidence.

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

   Response: Black's Law Dictionary (11th ed. 2019) defines the doctrine of originalism as follows: "1. The doctrine that words of a legal instrument are to be given the meanings they had when they were adopted; specif., the canon that a legal text should be interpreted through the historical ascertainment of the meaning that it would have conveyed to a fully informed observer at the time when the text first took effect. . . . . 2. The doctrine that a legal instrument should be interpreted to effectuate the intent of those who prepared it or made it legally binding." Rather than applying any particular label to myself as a judge, what I do as a sitting Los Angeles Superior Court judge, and what I will do if confirmed as a federal district court judge, is apply precedent when interpreting any legal instrument.

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

   Response: Black's Law Dictionary (11th ed. 2019) defines the doctrine of textualism as follows: "The doctrine that the words of a governing text are of paramount concern and

that what they fairly convey in their context is what the text means." Rather than applying any particular label to myself as a judge, what I do as a sitting Los Angeles Superior Court judge, and what I will do if confirmed as a federal district court judge, is apply precedent when determining the meaning of any legal text. In general, precedent dictates that the interpretation of a legal text begins with the text itself and ends with the text itself where that text is clear and unambiguous.

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

Response: Black's Law Dictionary (11th ed. 2019) defines the doctrine of living constitutionalism as follows: "The doctrine that the Constitution should be interpreted and applied in accordance with changing circumstances and, in particular, with changes in social values. While many authorities use the terms living constitutionalism and nonoriginalism interchangeably, others view living constitutionalism as a form of nonoriginalism that values interpretive conformity with changed circumstances and norms more greatly than do other forms of nonoriginalism." Rather than applying any particular label to myself as a judge, what I do as a sitting Los Angeles Superior Court judge, and what I will do if confirmed as a federal district court judge, is apply precedent when interpreting the Constitution.

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

Response: There is no individual Justice whose jurisprudence I admire the most.

8. Was *Marbury v. Madison* correctly decided?

Response: As a sitting judge on the Los Angeles Superior Court, and now a nominee for the federal district court, it is generally not for me to opine on the correctness of binding precedent in light of my duty to apply any and all binding precedent and to remain fair, open-minded, and impartial in every case. I agree with prior judicial nominees, however, that *Marbury v. Madison*, *Brown v. Board of Education*, and *Loving v. Virginia* establish foundational principles unlikely to be tested in any case to come before me and were correctly decided.

9. Was *Lochner v. New York* correctly decided?

Response: As a sitting judge on the Los Angeles Superior Court, and now a nominee for the federal district court, it is generally not for me to opine on the correctness of binding precedent in light of my duty to apply any and all binding precedent and to remain fair, open-minded, and impartial in every case. It is my understanding that *Lochner v. New York* has largely been overruled and is therefore no longer binding precedent.

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

Response: As a sitting judge on the Los Angeles Superior Court, and now a nominee for the federal district court, it is generally not for me to opine on the correctness of binding precedent in light of my duty to apply any and all binding precedent and to remain fair, open-minded, and impartial in every case. I agree with prior judicial nominees, however, that *Marbury v. Madison*, *Brown v. Board of Education*, and *Loving v. Virginia* establish foundational principles unlikely to be tested in any case to come before me and were correctly decided.

11. Was *Bolling v. Sharpe* correctly decided?

Response: As a sitting judge on the Los Angeles Superior Court, and now a nominee for the federal district court, it is generally not for me to opine on the correctness of binding precedent in light of my duty to apply any and all binding precedent and to remain fair, open-minded, and impartial in every case.

12. Was *Cooper v. Aaron* correctly decided?

Response: As a sitting judge on the Los Angeles Superior Court, and now a nominee for the federal district court, it is generally not for me to opine on the correctness of binding precedent in light of my duty to apply any and all binding precedent and to remain fair, open-minded, and impartial in every case.

13. Was *Mapp v. Ohio* correctly decided?

Response: As a sitting judge on the Los Angeles Superior Court, and now a nominee for the federal district court, it is generally not for me to opine on the correctness of binding precedent in light of my duty to apply any and all binding precedent and to remain fair, open-minded, and impartial in every case.

14. Was *Gideon v. Wainwright* correctly decided?

Response: As a sitting judge on the Los Angeles Superior Court, and now a nominee for the federal district court, it is generally not for me to opine on the correctness of binding precedent in light of my duty to apply any and all binding precedent and to remain fair, open-minded, and impartial in every case.

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

Response: As a sitting judge on the Los Angeles Superior Court, and now a nominee for the federal district court, it is generally not for me to opine on the correctness of binding precedent in light of my duty to apply any and all binding precedent and to remain fair, open-minded, and impartial in every case.

16. Was *South Carolina v. Katzenbach* correctly decided?

Response: As a sitting judge on the Los Angeles Superior Court, and now a nominee for the federal district court, it is generally not for me to opine on the correctness of binding precedent in light of my duty to apply any and all binding precedent and to remain fair, open-minded, and impartial in every case.

17. Was *Miranda v. Arizona* correctly decided?

Response: As a sitting judge on the Los Angeles Superior Court, and now a nominee for the federal district court, it is generally not for me to opine on the correctness of binding precedent in light of my duty to apply any and all binding precedent and to remain fair, open-minded, and impartial in every case.

18. Was *Katzenbach v. Morgan* correctly decided?

Response: As a sitting judge on the Los Angeles Superior Court, and now a nominee for the federal district court, it is generally not for me to opine on the correctness of binding precedent in light of my duty to apply any and all binding precedent and to remain fair, open-minded, and impartial in every case.

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

Response: As a sitting judge on the Los Angeles Superior Court, and now a nominee for the federal district court, it is generally not for me to opine on the correctness of binding precedent in light of my duty to apply any and all binding precedent and to remain fair, open-minded, and impartial in every case. I agree with prior judicial nominees, however, that *Marbury v. Madison*, *Brown v. Board of Education*, and *Loving v. Virginia* establish foundational principles unlikely to be tested in any case to come before me and were correctly decided.

20. Was *Katz v. United States* correctly decided?

Response: As a sitting judge on the Los Angeles Superior Court, and now a nominee for the federal district court, it is generally not for me to opine on the correctness of binding precedent in light of my duty to apply any and all binding precedent and to remain fair, open-minded, and impartial in every case.

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

Response: As a sitting judge on the Los Angeles Superior Court, and now a nominee for the federal district court, it is generally not for me to opine on the correctness of binding precedent in light of my duty to apply any and all binding precedent and to remain fair, open-minded, and impartial in every case.

22. Was *Romer v. Evans* correctly decided?

Response: As a sitting judge on the Los Angeles Superior Court, and now a nominee for the federal district court, it is generally not for me to opine on the correctness of binding precedent in light of my duty to apply any and all binding precedent and to remain fair, open-minded, and impartial in every case.

23. Was *United States v. Virginia* correctly decided?

Response: As a sitting judge on the Los Angeles Superior Court, and now a nominee for the federal district court, it is generally not for me to opine on the correctness of binding precedent in light of my duty to apply any and all binding precedent and to remain fair, open-minded, and impartial in every case.

24. Was *Bush v. Gore* correctly decided?

Response: As a sitting judge on the Los Angeles Superior Court, and now a nominee for the federal district court, it is generally not for me to opine on the correctness of binding precedent in light of my duty to apply any and all binding precedent and to remain fair, open-minded, and impartial in every case.

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

Response: As a sitting judge on the Los Angeles Superior Court, and now a nominee for the federal district court, it is generally not for me to opine on the correctness of binding precedent in light of my duty to apply any and all binding precedent and to remain fair, open-minded, and impartial in every case.

26. Was *Crawford v. Marion County Election Board* correctly decided?

Response: As a sitting judge on the Los Angeles Superior Court, and now a nominee for the federal district court, it is generally not for me to opine on the correctness of binding precedent in light of my duty to apply any and all binding precedent and to remain fair, open-minded, and impartial in every case.

27. Was *Boumediene v. Bush* correctly decided?

Response: As a sitting judge on the Los Angeles Superior Court, and now a nominee for the federal district court, it is generally not for me to opine on the correctness of binding precedent in light of my duty to apply any and all binding precedent and to remain fair, open-minded, and impartial in every case.

28. Was *Citizens United v. Federal Election Commission* correctly decided?

Response: As a sitting judge on the Los Angeles Superior Court, and now a nominee for the federal district court, it is generally not for me to opine on the correctness of binding precedent in light of my duty to apply any and all binding precedent and to remain fair, open-minded, and impartial in every case.

29. Was *Shelby County v. Holder* correctly decided?

Response: As a sitting judge on the Los Angeles Superior Court, and now a nominee for the federal district court, it is generally not for me to opine on the correctness of binding precedent in light of my duty to apply any and all binding precedent and to remain fair, open-minded, and impartial in every case.

30. Was *United States v. Windsor* correctly decided?

Response: As a sitting judge on the Los Angeles Superior Court, and now a nominee for the federal district court, it is generally not for me to opine on the correctness of binding precedent in light of my duty to apply any and all binding precedent and to remain fair, open-minded, and impartial in every case.

31. Was *Obergefell v. Hodges* correctly decided?

Response: As a sitting judge on the Los Angeles Superior Court, and now a nominee for the federal district court, it is generally not for me to opine on the correctness of binding precedent in light of my duty to apply any and all binding precedent and to remain fair, open-minded, and impartial in every case.

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

Response: A panel of any federal appellate court follows circuit precedent unless overruled implicitly or explicitly by a Supreme Court decision or an en banc holding of the circuit.

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

Response: A panel of any federal appellate court follows circuit precedent unless overruled implicitly or explicitly by a Supreme Court decision or an en banc holding of the circuit.

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

Response: What I do as a sitting Los Angeles Superior Court judge, and what I will do if confirmed as a federal district court judge, is apply precedent when interpreting any statute. If confirmed, in any case where I am called upon to interpret a statute, I will look to binding precedent to determine what role legislative history, general principles of

justice, or any other factor should play. In general, precedent dictates that the interpretation of a statute begins with the text itself and ends with the text itself where that text is clear and unambiguous.

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

Response: If confirmed as a federal district judge, I will apply federal law in sentencing any individual defendant. It is my understanding that federal sentencing is guided by certain statutory factors, the sentencing guidelines, and pertinent policy statements issued by the Sentencing Commission.

Questions from Senator Thom Tillis for Maame Ewusi-Mensah Frimpong
Nominee to be United States District Judge for the Central District of California

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

   Response: Yes.

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

   Response: Black's Law Dictionary (11th ed. 2019) defines judicial activism as follows: "A philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions, usu. with the suggestion that adherents of this philosophy tend to find constitutional violations and are willing to ignore governing texts and precedents." I do not consider judicial activism appropriate.

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

   Response: It is an expectation for a judge, and it should be the aspiration of all judges to continually improve on this aspect of the judicial role.

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

   Response: No.

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

   Response: As a Los Angeles County Superior Court judge, my focus is not on the desirability of the outcome in the abstract, but on my duty to faithfully interpret the law. The only outcome I desire is the one dictated by the rule of law.

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

   Response: No.

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

   Response: If confirmed, in every case that comes before me—including cases involving the Second Amendment—I will hear from the parties, research the relevant law, make factual findings as appropriate, and apply the law to the facts as dictated by binding precedent.

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

Response: As a sitting judge and judicial nominee, I am unable to prejudge any issue that might come before me, such as the one presented by this question. As a federal district court judge, I would be bound by any precedent governing this question. If confirmed, in any case raising this issue, I will hear from the parties, research the law, make factual findings as appropriate, and apply the law consistent with binding precedent.

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

Response: The Supreme Court has recently stated, "The doctrine of qualified immunity shields officers from civil liability so long as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. As we have explained, qualified immunity protects all but the plainly incompetent or those who knowingly violate the law." *City of Tahlequah v. Bond*, No. 20-1668, 2021 WL 4822664, at *2 (U.S. Oct. 18, 2021) (quotation marks and citations omitted). If confirmed, in any case raising questions of qualified immunity, I will hear from the parties, research the relevant law, make factual findings as appropriate, and apply the law to the facts as dictated by binding precedent.

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

Response: It is not for me as a sitting judge or a judicial nominee to opine on the sufficiency of the protection provided by any line of cases. If confirmed, I will follow any and all binding precedent on the issue of qualified immunity.

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

Response: It is not for me as a sitting judge or a judicial nominee to opine on the proper scope of qualified immunity protections. If confirmed, I will follow any and all binding precedent on the issue of qualified immunity.

12. Throughout the past decade, the Supreme Court has repeatedly waded into the area of patent eligibility, producing a series of opinions in cases that have only muddled the standards for what is patent eligible. The current state of eligibility jurisprudence is in

abysmal shambles. What are your thoughts on the Supreme Court's patent eligibility jurisprudence?

Response: It is not for me as a lower court judge to critique the Supreme Court's jurisprudence in any area. My focus as a sitting judge now, and, if confirmed, as a federal district court judge, is to ascertain and apply any and all binding precedent in any case that comes before me.

13. **How would you apply current patent eligibility jurisprudence to the following hypotheticals. Please avoid giving non-answers and actually analyze these hypotheticals.**

    a. ***ABC Pharmaceutical Company*** **develops a method of optimizing dosages of a substance that has beneficial effects on preventing, treating or curing a disease or condition for individual patients, using conventional technology but a newly-discovered correlation between administered medicinal agents and bodily chemicals or metabolites. Should this invention be patent eligible?**

    Response: As a Los Angeles Superior Court judge, and, if confirmed, as a federal district court judge, I have an obligation to remain fair, open-minded, and impartial in every case. To address any specific hypothetical would be inconsistent with that obligation and suggest to litigants that might come before me that I have prejudged their cases. If confirmed, in any case involving the issues raised by this hypothetical, I would hear from the parties, research the relevant law, make factual findings as appropriate, and apply the law to the facts as dictated by binding precedent.

    b. ***FinServCo*** **develops a valuable proprietary trading strategy that demonstrably increases their profits derived from trading commodities. The strategy involves a new application of statistical methods, combined with predictions about how trading markets behave that are derived from insights into human psychology. Should *FinServCo*'s business method standing alone be eligible? What about the business method as practically applied on a computer?**

    Response: As a Los Angeles Superior Court judge, and, if confirmed, as a federal district court judge, I have an obligation to remain fair, open-minded, and impartial in every case. To address any specific hypothetical would be inconsistent with that obligation and suggest to litigants that might come before me that I have prejudged their cases. If confirmed, in any case involving the issues raised by this hypothetical, I would hear from the parties, research the relevant law, make factual findings as appropriate, and apply the law to the facts as dictated by binding precedent.

    c. ***HumanGenetics Company*** **wants to patent a human gene or human gene fragment as it exists in the human body. Should that be patent eligible? What if**

HumanGenetics Company **wants to patent a human gene or fragment that contains sequence alterations provided by an engineering process initiated by humans that do not otherwise exist in nature? What if the engineered alterations were only at the end of the human gene or fragment and merely removed one or more contiguous elements?**

Response: As a Los Angeles Superior Court judge, and, if confirmed, as a federal district court judge, I have an obligation to remain fair, open-minded, and impartial in every case. To address any specific hypothetical would be inconsistent with that obligation and suggest to litigants that might come before me that I have prejudged their cases. If confirmed, in any case involving the issues raised by this hypothetical, I would hear from the parties, research the relevant law, make factual findings as appropriate, and apply the law to the facts as dictated by binding precedent.

d. ***BetterThanTesla ElectricCo*** **develops a system for billing customers for charging electric cars. The system employs conventional charging technology and conventional computing technology, but there was no previous system combining computerized billing with electric car charging. Should** ***BetterThanTesla*****'s billing system for charging be patent eligible standing alone? What about when it explicitly claims charging hardware?**

Response: As a Los Angeles Superior Court judge, and, if confirmed, as a federal district court judge, I have an obligation to remain fair, open-minded, and impartial in every case. To address any specific hypothetical would be inconsistent with that obligation and suggest to litigants that might come before me that I have prejudged their cases. If confirmed, in any case involving the issues raised by this hypothetical, I would hear from the parties, research the relevant law, make factual findings as appropriate, and apply the law to the facts as dictated by binding precedent.

e. ***Natural Laws and Substances, Inc.*** **specializes in isolating natural substances and providing them as products to consumers. Should the isolation of a naturally occurring substance other than a human gene be patent eligible? What about if the substance is purified or combined with other substances to produce an effect that none of the constituents provide alone or in lesser combinations?**

Response: As a Los Angeles Superior Court judge, and, if confirmed, as a federal district court judge, I have an obligation to remain fair, open-minded, and impartial in every case. To address any specific hypothetical would be inconsistent with that obligation and suggest to litigants that might come before me that I have prejudged their cases. If confirmed, in any case involving the issues raised by this hypothetical, I would hear from the parties, research the relevant law, make factual

findings as appropriate, and apply the law to the facts as dictated by binding precedent.

f. A business methods company, *FinancialServices Troll,* specializes in taking conventional legal transaction methods or systems and implementing them through a computer process or artificial intelligence. Should such implementations be patent eligible? What if the implemented method actually improves the expected result by, for example, making the methods faster, but doesn't improve the functioning of the computer itself? If the computer or artificial intelligence implemented system does actually improve the expected result, what if it doesn't have any other meaningful limitations?

Response: As a Los Angeles Superior Court judge, and, if confirmed, as a federal district court judge, I have an obligation to remain fair, open-minded, and impartial in every case. To address any specific hypothetical would be inconsistent with that obligation and suggest to litigants that might come before me that I have prejudged their cases. If confirmed, in any case involving the issues raised by this hypothetical, I would hear from the parties, research the relevant law, make factual findings as appropriate, and apply the law to the facts as dictated by binding precedent.

g. *BioTechCo* discovers a previously unknown relationship between a genetic mutation and a disease state. No suggestion of such a relationship existed in the prior art. Should *BioTechCo* be able to patent the gene sequence corresponding to the mutation? What about the correlation between the mutation and the disease state standing alone? But, what if *BioTech Co* invents a new, novel, and nonobvious method of diagnosing the disease state by means of testing for the gene sequence and the method requires at least one step that involves the manipulation and transformation of physical subject matter using techniques and equipment? Should that be patent eligible?

Response: As a Los Angeles Superior Court judge, and, if confirmed, as a federal district court judge, I have an obligation to remain fair, open-minded, and impartial in every case. To address any specific hypothetical would be inconsistent with that obligation and suggest to litigants that might come before me that I have prejudged their cases. If confirmed, in any case involving the issues raised by this hypothetical, I would hear from the parties, research the relevant law, make factual findings as appropriate, and apply the law to the facts as dictated by binding precedent.

h. Assuming *BioTechCo's* diagnostic test is patent eligible, should there exist provisions in law that prohibit an assertion of infringement against patients receiving the diagnostic test? In other words, should there be a testing

exemption for the patient health and benefit? If there is such an exemption, what are its limits?

Response: As a Los Angeles Superior Court judge, and, if confirmed, as a federal district court judge, I have an obligation to remain fair, open-minded, and impartial in every case. To address any specific hypothetical would be inconsistent with that obligation and suggest to litigants that might come before me that I have prejudged their cases. If confirmed, in any case involving the issues raised by this hypothetical, I would hear from the parties, research the relevant law, make factual findings as appropriate, and apply the law to the facts as dictated by binding precedent.

i. *Hantson Pharmaceuticals* develops a new chemical entity as a composition of matter that proves effective in treating TrulyTerribleDisease. Should this new chemical entity be patent eligible?

Response: As a Los Angeles Superior Court judge, and, if confirmed, as a federal district court judge, I have an obligation to remain fair, open-minded, and impartial in every case. To address any specific hypothetical would be inconsistent with that obligation and suggest to litigants that might come before me that I have prejudged their cases. If confirmed, in any case involving the issues raised by this hypothetical, I would hear from the parties, research the relevant law, make factual findings as appropriate, and apply the law to the facts as dictated by binding precedent.

j. *Stoll Laboratories* discovers that superconducting materials superconduct at much higher temperatures when in microgravity. The materials are standard superconducting materials that superconduct at lower temperatures at surface gravity. Should *Stoll Labs* be able to patent the natural law that superconductive materials in space have higher superconductive temperatures? What about the space applications of superconductivity that benefit from this effect?

Response: As a Los Angeles Superior Court judge, and, if confirmed, as a federal district court judge, I have an obligation to remain fair, open-minded, and impartial in every case. To address any specific hypothetical would be inconsistent with that obligation and suggest to litigants that might come before me that I have prejudged their cases. If confirmed, in any case involving the issues raised by this hypothetical, I would hear from the parties, research the relevant law, make factual findings as appropriate, and apply the law to the facts as dictated by binding precedent.

14. Based on the previous hypotheticals, do you believe the current jurisprudence provides the clarity and consistency needed to incentivize innovation? How would you apply the

Supreme Court's ineligibility tests—laws of nature, natural phenomena, and abstract ideas—to cases before you?

Response: As a Los Angeles Superior Court judge, and, if confirmed, as a federal district court judge, my role is to decide the cases and controversies that come before me. It is not my role to determine whether the binding precedent provides the clarity and consistency needed to incentivize innovation. If confirmed, in any case involving issues of patent ineligibility, I would hear from the parties, research the relevant law, make factual findings as appropriate, and apply the law to the facts as dictated by binding precedent.

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

a. What experience do you have with copyright law?

Response: I handled copyright matters as a Ninth Circuit judicial law clerk, as an associate at Morrison & Foerster LLP, and as an attorney for the United States Department of Justice.

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

Response: I do not recall any particular experiences I have had involving the Digital Millennium Copyright Act, but I have handled copyright matters as a Ninth Circuit judicial law clerk, as an associate at Morrison & Foerster LLP, and as an attorney for the United States Department of Justice.

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

Response: I do not recall any particular experiences I have had involving this issue, but I have handled intellectual property and technology matters as a Ninth Circuit judicial law clerk, as an associate at Morrison & Foerster LLP, and as an attorney for the United States Department of Justice.

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

Response: I do not recall handling any First Amendment or free speech issues as an attorney or as a judge. I have handled intellectual property issues, including copyright,

as a Ninth Circuit judicial law clerk, as an associate at Morrison & Foerster LLP, and as an attorney for the United States Department of Justice.

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

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

Response: What I do as a sitting Los Angeles Superior Court judge, and what I will do if confirmed as a federal district court judge, is apply precedent when interpreting a statute. If confirmed, in any case where I am called upon to interpret a statute, I will look to binding precedent to determine what role legislative history and other factors should play.

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

Response: What I do as a sitting Los Angeles Superior Court judge, and what I will do if confirmed as a federal district court judge, is apply precedent when interpreting the Constitution. If confirmed, in any case where I am called upon to interpret a Constitutional provision, I will look to binding precedent to determine what role agency advice and analysis and other factors should play.

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

Response: As a Los Angeles Superior Court judge, and, if confirmed, as a federal district court judge, I have an obligation to remain fair, open-minded, and impartial in every case. To address any specific hypothetical would be inconsistent with that obligation and suggest to litigants that might come before me that I have prejudged their cases. If confirmed, in any case involving the issues raised by this hypothetical, I would hear from the parties, research the relevant law, make factual

findings as appropriate, and apply the law to the facts as dictated by binding precedent.

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

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

Response: As a Los Angeles Superior Court judge, and, if confirmed, as a federal district court judge, I have an obligation to remain fair, open-minded, and impartial in every case. To address how judges should handle the matters raised by this question would be inconsistent with that obligation and suggest to litigants that might come before me that I have prejudged their cases. If confirmed, in any case involving the application of the Digital Millennium Copyright Act, I will hear from the parties, research the relevant law, make factual findings as appropriate, and apply the law to the facts as dictated by binding precedent.

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

Response: As a Los Angeles Superior Court judge, and, if confirmed, as a federal district court judge, I have an obligation to remain fair, open-minded, and impartial in every case. To address how judges should handle the matters raised by this question would be inconsistent with that obligation and suggest to litigants that might come before me that I have prejudged their cases. If confirmed, in any case involving the application of prior judicial opinions to a changed technological landscape, I will hear from the parties, research the relevant law, make factual findings as appropriate, and apply the law to the facts as dictated by binding precedent.