Senator Chuck Grassley, Ranking Member
Questions for the Record
Judge Margaret Rose Guzman
Nominee to be United States District Judge, District of Massachusetts

1. **An article published by *The Patriot Ledger* noted that "defendants who fight drunken-driving charges before a judge instead of a jury enjoy great odds of being acquitted." The article also highlighted your bench trial acquittal rate for the 45-month period between 2008 and 2011:**

   > **In some cases, judicial leniency was 100 percent. According to the report, Judge Margaret Guzman in Dudley District Court acquitted all 149 defendants in bench trials during the period that the special counsel reviewed. The state average for acquittals at bench trials was 86 percent.**

   a. **Please explain why you acquitted every defendant charged with operating under the influence who appeared before you in a bench trial between 2008 and 2011.**

      Response: At the time that the article was published, serious issues were raised as to the accuracy of the reported statistics. I registered my strong objections to my superiors, as I believed it mischaracterized my record.

      During my entire 13 years as a state court judge, I have taken seriously my responsibility to be fair and impartial to all parties and in every case. I take great care to recuse myself from any case that would present even the appearance of a conflict. In every bench trial I presided over, I assessed the evidence, applied the law and the burden of proof, and issued a verdict that I believed to be supported by the credible evidence. I have convicted and acquitted defendants of criminal charges, including charges of operating under the influence during my 13 years on the bench.

   b. **Were any of these defendants ever arrested again?**

      Response: I am not aware of any such occurrence.

2. **In a 2005 article, you discussed the nomination of John Roberts to serve as Chief Justice of the United States, stating that: "I have a lot of respect for the court, even though I disagree with many of the decisions . . . There is a legitimacy to it because of its independence."**

   a. **Do you still believe the Supreme Court is legitimate because it is independent? Please explain.**

   b. **Do you still believe the Supreme Court is independent? Please explain.**

Response includes subpart (a) and (b): I have deep faith in our system of government. I believe one of the greatest strengths in our system is the independence of each of the branches, which is also key to its longevity. If I am confirmed, I would faithfully follow all precedent of the Supreme Court.

3. **In the same article, you registered your concerns about Mr. Roberts' "depth of humanity." Please define the term "depth of humanity".**
    a. **Does Justice Ketanji Brown Jackson meet your standard concerning "depth of humanity"? Please explain why or why not.**
    b. **Does Justice Clarence Thomas meet your standard concerning "depth of humanity"? Please explain why or why not.**
    c. **Does Justice Sonia Sotomayor meet your standard concerning "depth of humanity"? Please explain why or why not.**
    d. **Does Justice Samuel Alito meet your standard concerning "depth of humanity"? Please explain why or why not.**

    Response includes subpart (a), (b), (c), and (d): After the 2005 nomination of then-Judge Roberts to Chief Justice of the Supreme Court and in response to a media inquiry, I voiced my admiration for Chief Justice Roberts' intellect and demeanor. I continue to have the highest esteem for his leadership and I have great respect for all members of the Supreme Court. If I am confirmed, I will faithfully follow all precedent from the Supreme Court.

4. **What is more important during the COVID-19 pandemic—protecting the community from violent, repeat firearm offenders or releasing violent firearm reoffenders to the community to protect the defendant from COVID-19?**

    Response: As a state court judge for more than 13 years, I have dealt with thousands of cases involving issues of pre-and post-trial release and confinement, conditional releases, and non-compliance with conditions of release. If I am confirmed, I will utilize all pre-trial guidance, strictly adhere to Supreme Court and First Circuit precedents, and take into account all relevant factors when evaluating motions for release. To be clear, public safety is a critically important consideration in any evaluation of these issues.

5. **At sentencing, is the fact that a defendant had been previously convicted of a crime of violence several years earlier a sufficient reason to justify not counting a conviction toward a defendant's career offender status, or to justify a downward departure from the guidelines? Please explain why or why not.**

    Response: A federal judge's sentencing decisions are governed by 18 U.S.C.§ 3553(a), which directs courts to "impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth" in the statute, and further directs the courts "shall

consider" each of the specifically enumerated factors listed therein. One of the factors district courts must consider in each case is "the kinds of sentence and the sentencing range" recommended in the guidelines, as applicable to the individual defendant and the offense(s) in question. See § 3553(a)(4)). If confirmed, I will consider the Guidelines-recommended sentence and sentencing range in each case and depart from the Guidelines only where authorized and appropriate under the totality of the analysis required by 18 U.S.C. § 3553(a).

6. **Who should respond to a domestic violence call where there is an allegation that the aggressor is armed—the police or a social worker?**

   Response: As a judicial nominee, it would be improper for me to comment on issues related to public safety, including the best use of first responders, which are important issues for policy makers.

7. **Earlier this year, Attorney General Merrick Garland announced imminent action against parents protesting various policies being implemented at public schools across the country.**
   a. **Do you think it is appropriate for the DOJ to weaponize federal law enforcement agencies against concerned parents discussing changes to their children's curriculum at local school board meetings?**

      Response: As a judicial nominee, it would be improper for me to comment on a policy decision of another branch of government. If confirmed, I would faithfully apply relevant Supreme Court and First Circuit precedent to any issue before me arising out of such a decision.

   b. **Which of the following groups of people have the right to protest government intrusion and/or overreach and why?**
      i. **Concerned parents about the curricula in public schools?**
      ii. **Black Lives Matter protestors?**
      iii. **Climate change protestors?**
      iv. **Religious groups protesting abortion?**

      Response: Under the United States Constitution, all of the above are entitled to the guarantees of the First Amendment, which include the freedoms concerning religion, expression, assembly and the right to petition. Among other guarantees, the First Amendment guarantees freedom of expression by prohibiting Congress from restricting the press or the rights of individuals to speak freely. It also guarantees the right of citizens to assemble peaceably and to petition their government.

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

Response: No. If confirmed, I would adhere to proper judicial decision-making which requires a fair determination of the facts, and faithful adherence to the law and Supreme Court and First Circuit precedent

9. **Please identify a Supreme Court decision from the last 50 years that exemplifies your judicial philosophy and explain why.**

   Response: As a judicial nominee, it would be inappropriate for me to single out any decision as more noteworthy or to my liking. I commit to applying all Supreme Court and First Circuit precedent to cases under my consideration. I do not identify with a particular judicial philosophy, but rather a work ethic that demands fair and equal treatment to all litigants, faithful application of the law and diligence in my efforts.

10. **Please identify a First Circuit or District of Massachusetts judicial opinion from the last 50 years that exemplifies your judicial philosophy and explain why.**

    Response: As a judicial nominee, it would be inappropriate for me to single out any decision as more noteworthy or to my liking. I do not identify with a particular judicial philosophy, but rather a work ethic that demands fair and equal treatment to all litigants, faithful application of the law and diligence in my efforts.

11. **Do you believe that legal gun purchases have caused the violent crime spike in Boston?**

    Response: The causes and societal responses to issues of crime in any community are left to social scientists and policy makers. If I am confirmed, I commit to addressing each case on its merits, without preconceived notions and to faithfully apply Supreme Court and First Circuit precedent.

12. **What is implicit bias?**

    Response: Implicit bias is generally defined as unconscious assumptions about individuals or circumstances.

13. **Is the federal judiciary affected by implicit bias?**

    Response: This is an important question for policy makers to consider. As a state trial court judge for the past 13 years, I have worked hard every day to ensure that my decisions are made free from bias and that I treat every litigant in my courtroom fairly. In my capacity as a sitting judge adjudicating individual cases, if faced with a claim of bias or unwarranted disparities in treatment, I would evaluate the claim based on the record before me.

14. **Do you have implicit bias?**

Response: I do not believe I am immune from unconscious assumptions about individuals or circumstances, because my understanding is that all people have unconscious assumptions. However, I can control my work method. I approach every case with an open mind, directly engage with the litigants, determine the facts as fairly as possible and apply the law. As a state trial court judge for the past 13 years, I have worked hard every day to ensure that my decisions are made free from bias and that I treat every litigant in my courtroom fairly.

15. **Please state the governing law for self-defense in Massachusetts and the First Circuit.**

Response: Under state law, the Massachusetts Supreme Judicial Court ruled that once a defendant has sufficiently raised the issue of self-defense, the prosecution carries the burden of proving beyond a reasonable doubt that the defendant did not act in self-defense. *Commonwealth v. McGann*, 484 Mass. 312, 141 N.E.3d. 405 (2020).

On a federal challenge to a defendant's self-defense claim, the First Circuit held in *United States v. Leahy*, 473 F.3d. 401 (2007), that once a self-defense claim has been asserted, the determination of the burden of proof rests on the presence of a mens rea requirement (assault offenses) or a strict liability offense (e.g., felon-in possession offenses). In *Leahy,* the court held that "in a federal felon in possession prosecution…the defendant who asserts self-defense…must carry the devoir of persuasion on that defense by a preponderance of the evidence." *Id*. at 409.

16. **Do you believe that we should defund police departments? Please explain.**

Response: Issues related to public safety, including funding sources and policy considerations, are best left to policy makers and legislators. If I am confirmed, I will commit to faithfully apply all relevant law and Supreme Court and First Circuit precedent to each case.

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

Response: The issues related to public safety, including funding sources and policy considerations, are within the scope of policy makers and legislators. If I am confirmed, I will commit to faithfully apply all relevant law and Supreme Court and First Circuit precedent to each case.

18. **Do you believe that the federal government should reallocate funds away from the Department of Justice, specifically, U.S. Attorney's Offices, to provide greater support to the Federal Public Defenders?**

Response: The issues related to public safety, including funding sources and policy considerations, are within the scope of policy makers and legislators. If I am confirmed, I will commit to faithfully apply all relevant law and Supreme Court and First Circuit precedents to each case.

19. **Do you believe that the federal government should decriminalize possession of all drugs?**

Response: The issues related to public safety, including funding sources and policy considerations, are within the scope of policy makers and legislators. If I am confirmed, I will commit to faithfully apply all relevant law and Supreme Court and First Circuit precedents to each case.

20. **In what situation(s) does qualified immunity not apply to a law enforcement officer in Massachusetts?**

Response: The Massachusetts Supreme Judicial Court has looked to *Saucier v. Katz*, 533 U.S. 194 (2001), for the two-part test to be applied in an evaluation of a claim of qualified immunity. Per the court, a Massachusetts trial judge first decides whether, taken in the light most favorable to the party asserting the injury, the facts alleged show the officer's conduct violated a constitutional right. If so, the judge then asks whether the right was clearly established so that it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted. See *Gutierrez v. Mass. Bay Trans. Auth*., 437 Mass. 396, 772 N.E.2d 552 (2002).

21. **What is the legal basis for a nationwide injunction?**

Response: Federal courts considering a request for injunctive relief must apply the standards and procedures set forth in Federal Rule of Civil Procedure 65. An injunction "is a drastic and extraordinary remedy, which should not be granted as a matter of course," *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165 (2010); accordingly, injunctive relief should be no more burdensome to the defendants than necessary to provide complete relief to the plaintiffs. *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979). Most recently, the Supreme Court upheld the grant of preliminary injunctive relief and ordered a nationwide stay barring enforcement of certain aspects of the Occupational Safety and Health Administration's workplace vaccine mandate in a pending challenge to the mandate. *See Nat'l Fed. Of Indep. Bus. et al., v. Dep't of Labor et al.,* 595 U.S. ____ (2022) (per curiam). If confirmed, I would be bound by, and would faithfully and impartially follow, all precedent from the Supreme Court and the First Circuit, including on the issues of the proper scope of injunctive relief and when district courts may order such relief.

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

Response: Yes. In *Meyer v. Nebraska*, 262 U.S. 390 (1923), the Supreme Court held that parents have the right to direct the education of their children. *Id*. at 400.

23. **What legal standard and circuit precedents would you apply in evaluating whether a regulation or statute infringes on Second Amendment rights?**

Response: In *District of Columbia v. Heller*, 554 U.S. 570, 622 (2008), the Supreme Court held "that the Second Amendment confers an individual right to keep and bear arms," and struck down certain firearm restrictions in the District of Columbia that infringed upon those rights. In *New York Rifle and Pistol Association, Inc. v. Bruen*, 597 U.S.___ (2022), the Supreme Court assessed a challenge to a state law which placed restrictions on public carry of firearms. In striking down the regulation, the court asserted that "the right to bear arms in public for self-defense is not a [s]econd-class right." The court applied a more stringent test of whether the law's proper cause requirement is consistent with the nation's historical tradition of firearm regulation.

24. **Please answer the following questions yes or no. If you would like to include an additional narrative response, you may do so, but only after a yes or no answer:**
    a. **Was *Brown v. Board of Education* correctly decided?**

    Response: As a sitting judge and a judicial nominee to the United States District Court, District of Massachusetts it would be inappropriate for me to comment on whether these precedents are correctly decided. If confirmed, I will faithfully apply Supreme Court and First Circuit precedent.

    There are, however, some holdings that are unlikely to be challenged in future litigation. I believe that *Brown v. Board of Education* is such a case, and therefore I can state that it was correctly decided.

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

    Response: As a sitting judge and a judicial nominee to the United States District Court, District of Massachusetts it would be inappropriate for me to comment on whether these precedents are correctly decided. If confirmed, I will faithfully apply Supreme Court and First Circuit precedent.

    There are, however, some holdings that are unlikely to be challenged in future litigation. I believe that *Loving v. Virginia* is such a case, and therefore I can state that it was correctly decided.

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

    Response: As a sitting judge and a judicial nominee to the United States District Court, District of Massachusetts it would be inappropriate for me to comment on

whether these precedents are correctly decided. If confirmed, I will faithfully apply Supreme Court and First Circuit precedent.

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

Response: The Supreme Court's decision in *Dobbs v. Jackson Women's Health* overturned the holdings in *Roe v. Wade* and *Planned Parenthood v. Casey*. As a sitting judge and a judicial nominee to the United States District Court, District of Massachusetts it would be inappropriate for me to comment on whether these precedents are correctly decided. If confirmed, I will faithfully apply Supreme Court and First Circuit precedent.

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

Response: The Supreme Court's decision in *Dobbs v. Jackson Women's Health* overturned the holdings in *Roe v. Wade* and *Planned Parenthood v. Casey*. As a sitting judge and a judicial nominee to the United States District Court, District of Massachusetts it would be inappropriate for me to comment on whether these precedents are correctly decided. If confirmed, I will faithfully apply Supreme Court and First Circuit precedent.

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

Response: As a sitting judge and a judicial nominee to the United States District Court, District of Massachusetts it would be inappropriate for me to comment on whether these precedents are correctly decided. If confirmed, I will faithfully apply Supreme Court and First Circuit precedent.

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

Response: As a sitting judge and a judicial nominee to the United States District Court, District of Massachusetts it would be inappropriate for me to comment on whether these precedents are correctly decided. If confirmed, I will faithfully apply Supreme Court and First Circuit precedent.

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

Response: As a sitting judge and a judicial nominee to the United States District Court, District of Massachusetts it would be inappropriate for me to comment on whether these precedents are correctly decided. If confirmed, I will faithfully apply Supreme Court and First Circuit precedent.

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

Response: As a sitting judge and a judicial nominee to the United States District Court, District of Massachusetts it would be inappropriate for me to comment on whether these precedents are correctly decided. If confirmed, I will faithfully apply Supreme Court and First Circuit precedent.

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

Response: As a sitting judge and a judicial nominee to the United States District Court, District of Massachusetts it would be inappropriate for me to comment on whether these precedents are correctly decided. If confirmed, I will faithfully apply Supreme Court and First Circuit precedent.

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

Response: As a sitting judge and a judicial nominee to the United States District Court, District of Massachusetts it would be inappropriate for me to comment on whether these precedents are correctly decided. If confirmed, I will faithfully apply Supreme Court and First Circuit precedent.

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

Response to all subparts (a), (b), and (c): No.

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

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

Response to all subparts (a), (b), and (c): No.

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

Response to all subparts (a), (b), (c) and (d): No.

28. **The Open Society Foundations is a progressive organization that "work[s] to build vibrant and inclusive democracies whose governments are accountable to their citizens."**
    a. **Has anyone associated with Open Society 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?**
    b. **Are you currently in contact with anyone associated with the Open Society Foundations?**
    c. **Have you ever been in contact with anyone associated with the Open Society Foundations?**

Response to all subparts (a), (b), and (c): No.

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

a. **Has anyone associated with Fix the Court requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**
b. **Are you currently in contact with anyone associated with Fix the Court, including but not limited to: Gabe Roth, Tyler Cooper, Dylan Hosmer-Quint and/or Mackenzie Long?**
c. **Have you ever been in contact with anyone associated with Fix the Court, including but not limited to: Gabe Roth, Tyler Cooper, Dylan Hosmer-Quint and/or Mackenzie Long?**

Response to all subparts (a), (b), and (c): No.

30. **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: On April 16, 2021, I submitted an application to the Bipartisan Advisory Committee on Massachusetts Judicial Nominations convened by Senators Edward Markey and Elizabeth Warren to be considered for a position on the United States District Court for the District of Massachusetts. On May 3, 2021, I interviewed with the advisory committee. On June 11, 2021, I interviewed with Senators Warren and Markey.

On November 5, 2021, I interviewed with attorneys from the White House Counsel's Office. Since November 6, 2021, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On July 13, 2022, the President announced his intent to nominate me.

31. **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 did not speak with anyone from that organization, and I have no knowledge of anyone speaking to anyone from that organization on my behalf.

32. **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 did not speak with anyone from that organization, and I have no knowledge of anyone speaking to anyone from that organization on my behalf.

33. **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: I did not speak with anyone from that organization, or any of the other named subsidiaries, and I have no knowledge of anyone speaking to anyone from any of those organization on my behalf.

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

Response: I did not speak with anyone from that organization, and I have no knowledge of anyone speaking to anyone from that organization on my behalf.

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

Response: I did not speak with anyone from that organization, and I have no knowledge of anyone speaking to anyone from that organization on my behalf.

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

Response: On November 5, 2021, I interviewed with attorneys from the White House Counsel's Office. Since November 6, 2021, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On July 13, 2022, the President announced his intent to nominate me.

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

Response: I received the questions on September 28, 2022. I prepared answers to each question based on my own knowledge and individual research. I submitted draft answers to the Office of Legal Policy (OLP). I considered the input of OLP and finalized my answers for submission to the Senate Judiciary Committee.

Questions for the Record for Margaret Rose Guzman
From Senator Mazie K. Hirono

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

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

      Response: No.

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

      Response: No.

Senator Mike Lee
Questions for the Record
Margaret Guzman, Nominee to be United States District Court for the District of Massachusetts

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

   Response: During my 13 years as a judge, I have approached each case with an open mind, providing an opportunity for all parties to be heard, and putting aside any personal beliefs. As a state court judge, I rely on my own legal research and writing, which allows me to keep current on developments in the law. I work hard to deliver rulings in a timely manner, and to ensure that they are readable and understandable to all parties, whether they are legally trained or not, so that my legal reasoning is clear. If confirmed, I will continue to bring that work ethos and faithfully apply the law as dictated by the Supreme Court and First Circuit precedents.

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

   Response: In dealing with a case which turned on the interpretation of a federal statute, I would first consult the text of the statute and any applicable Supreme Court and First Circuit precedent which interpreted the statute. If the meaning of the text is plain, the inquiry ends. If the language is ambiguous and there is no applicable Supreme Court or First Circuit precedent, I would also consult persuasive authority such as Supreme Court or First Circuit precedent on analogous statutes or similar language, other circuit precedents, relevant canons of interpretation, and legislative history.

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

   Response: In deciding a case that turned on the interpretation of a constitutional provision, I would consult the text of the constitutional provision itself and any applicable Supreme Court and First Circuit precedent, and if necessary, further consult applicable canons of interpretation, or interpretive methodologies used by the Supreme Court and the First Circuit.

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

   Response: When interpreting the Constitution, the text and original meaning play an important role. In *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2132 (2022) the Supreme Court stated that "the meaning [of the Constitution] is fixed according to the understanding of those who ratified it, the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated."

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

Response: In my process of decision-making, I would first consult the text of the statute and any applicable Supreme Court and First Circuit precedent which interpreted the statute. If the meaning of the text is plain, the inquiry ends. If the language is ambiguous and there is no applicable Supreme Court or First Circuit precedent, I would also consult persuasive authority such as Supreme Court or First Circuit precedent on analogous statutes or similar language, other circuit precedents, relevant canons of interpretation, and legislative history.

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

Response: The Supreme Court "normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment". *Bostock v. Clayton Cty., Georgia*, 140 S. Ct. 1731, 1738 (2020). In its discussion on interpretation of the Second Amendment, the Supreme Court instructed that courts are to look at the "normal and ordinary" meaning of words and not "secret or technical meanings that would not have been known to ordinary citizens in the founding generation." *District of Columbia v. Heller*, 554 U.S. 570, 576-77 (2008).

6. What are the constitutional requirements for standing?

Response: In order for a plaintiff to have standing, the Constitution requires: "(i) that he suffered an injury in fact that is concrete, particularized, and actual or imminent; (ii) that the injury was likely caused by the defendant; and (iii) that the injury would likely be addressed by judicial relief." *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2203 (2021).

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

Response: In *McCullough v. Maryland*, 17 U.S. 316 (1819), the Supreme Court held that the Necessary and Proper Clause of the Constitution provides Congress with implied powers that are necessary and proper to execute Congress's enumerated powers.

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

Response: I would look to Supreme Court and First Circuit precedent to guide my inquiry into whether Congress exceeded its constitutional authority.

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

Response: In *Glucksburg*, the Supreme Court described the rights it had identified as protected by substantive due process as follows: "In a long line of cases, we have

held that, in addition to the specific freedoms protected by the Bill of Rights, the 'liberty' specially protected by the Due Process Clause includes the rights to marry, *Loving v. Virginia*, 388 U.S. 1 (1967); to have children, *Skinner v. Oklahoma ex rel Williamson*, 316 U.S. 535 (1942); to direct the education and upbringing of one's children, *Meyer v. Nebraska*, 262 U.S. 390 (1923); *Pierce v. Society of Sisters*, 268 U.S. *510 (1925*); to marital privacy*, Griswold v. Connecticut,* 381 U.S. 479 (1965)*;* to use contraception*, ibid.; Eisenstadt v. Baird,* 405 U.S. 438 (1972)*;* to bodily integrity*, Rochan v. California*, 342 U.S. 165 (1952), and to abortion*, Casey supra.* We have also assumed, and strongly suggested, that the Due Process Clause protects the traditional right to refuse unwanted lifesaving medical treatment*. Cruzan,* 497 U.S., at 278-79*." Washington v. Glucksburg,* 521 U.S. 702, 720 (1997). In *Dobbs v. Jackson Women's Health Organization,* 597 U.S. ___ (2022), the Supreme Court overturned *Roe v. Wade,* 410 U.S. 113 (1973), and *Planned Parenthood of Southeastern PA v. Casey,* 505 U.S. 833 (1992), giving states the full power to regulate any aspect of abortion not preempted by federal law.

10. What rights are protected under substantive due process?

Response: See my answer in Question 9.

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

Response: In *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022), the Supreme Court held that the Constitution does not protect a right to abortion. The Supreme Court has held that the economic rights at stake in *Lochner v. New York* are not protected by the Constitution. See *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937).

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

Response: Congress's power under the Commerce Clause is generally limited to three categories of activity: (1) "the use of the channels of interstate commerce"; (2) "the instrumentalities of interstate commerce, or persons or things in interstate commerce"; and (3) activities that "substantially affect interstate commerce." *United States v. Lopez,* 514 U.S. 549, 558-59 (1995). *See also National Federation of Independent Business v. Sebelius*, 567 U.S. 519, 551 (2012).

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

Response: The Supreme Court has designated four suspect classifications: race, national origin, religion, and alienage.

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

Response: The framers of the United States Constitution designed the government to balance power between the branches of government as a way to safeguard the democratic system and so as to avoid concentration of power in one branch.

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

Response: If confirmed, I would rely on Supreme Court and First Circuit precedent in order to resolve the issue.

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

Response: Empathy should play no role in consideration of a case. A judge must be impartial in each case, in spite of any personal feelings. If confirmed, I will endeavor to treat each case fairly and impartially.

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

Response: Both actions are equally improper.

18. From 1789 to 1857, the Supreme Court exercised its power of judicial review to strike down federal statutes as unconstitutional only twice. Since then, the invalidation of federal statutes by the Supreme Court has become significantly more common. What do you believe accounts for this change? What are the downsides to the aggressive exercise of judicial review? What are the downsides to judicial passivity?

Response: I have not studied, nor faced as a legal matter, the above issue. As a nominee, it would also be inappropriate for me to offer any opinion.

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

Response: *Marbury v. Madison* established that judicial review is the authority of the judicial branch to determine the constitutionality of government actions. 5 U.S. 137 (1803). Judicial supremacy refers to the binding power of the Supreme Court constitutional interpretations on all other forums.

20. Abraham Lincoln explained his refusal to honor the Dred Scott decision by asserting that "If the policy of the Government upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the Supreme Court . . . the people will have ceased to be their own rulers, having to that extent practically resigned their Government into the hands of that eminent tribunal." How do you think elected officials should balance their independent obligation to follow the Constitution with the need to respect duly rendered judicial decisions?

Response: All elected officials, whether local, state or federal, must abide by their oath to support the Constitution and follow the decisions of the Supreme Court interpreting the Constitution.

21. In Federalist 78, Hamilton says that the courts are the least dangerous branch because they have neither force nor will, but only judgment. Explain why that's important to keep in mind when judging.

Response: It is the duty of a judge to faithfully apply the law to all cases before the court, fairly and without fear or favor.

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

Response: Lower court judges are duty-bound to follow the precedent of the Supreme Court and the circuit in which they sit. If confirmed, I will evaluate each case on its own facts and apply the applicable law and precedent.

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

Response: None. 18 U.S.C. § 3553(a) sets out the appropriate sentencing factors judges should consider when fashioning a sentence and demographics do not play a role. The United States Sentencing Guidelines also sets out that considerations of race, sex, national origin, creed, religion, and socio-economic status are not relevant in determining a sentence. U.S.S.G. § 5H1.10.

24. The Biden Administration has defined "equity" as: "the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality." Do you agree with that definition? If not, how would you define equity?

Response: The Fourteenth Amendment guarantees "equal protection of the laws."

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

Response: Black's Law Dictionary defines equity as "[f]airness; impartiality; even-handed dealing." Black's Law Dictionary (11th ed. 2019).

Black's Law Dictionary defines equality as "[t]he quality, state or condition of being equal; esp., likeness in power or political status." *Id*.

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

Response: See my response to Question 24.

27. How do you define "systemic racism?"

Response: While the term may be the appropriate subject of social science studies, or considerations by policy makers, I do not have a specific defination.

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

Response: I generally understand it to be a subject of academic and legal study.

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

Response: See my responses to Question 27 and 28.

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

Questions for the Record for Margaret R. Guzman, Nominee to the United States District Court for the District of Massachusetts

I. Directions

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

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

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

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

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

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

II. Questions

1. **Is racial discrimination wrong?**

Response: Yes. The Equal Protection Clause of the Fourteenth Amendment prohibits states from denying any person "the equal protection of the laws." U.S. Const. amend XIV. Specific protections arise out of statutes such as Title VII of the Civil Rights Act of 1964, which prohibits discrimination in employment on the basis of race, religion, sex and national origin.

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

Response: The Supreme Court has held that an unenumerated right is fundamental and protected under the Due Process Clauses of the Fifth and Fourteenth Amendment if the right is "deeply rooted in this Nation's history and tradition and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist of [it] were sacrificed." *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997) (citations and internal quotation marks omitted). If confirmed, I would apply that test and any binding precedents from the Supreme Court and the First Circuit to analyze any future claim to a fundamental right.

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

Response: During my 13 years as a judge, I have approached each case with an open mind, providing an opportunity for all parties to be heard, and putting aside any personal beliefs. As a state court judge, I rely on my own legal research and writing, which allows me to keep current on developments in the law. I work hard to deliver rulings in a timely manner, and to ensure that they are readable and understandable to all parties, whether they are legally trained or not, so that my legal reasoning is clear. If confirmed, I will continue to bring that work ethos and faithfully apply the law as dictated by the Supreme Court and First Circuit precedents.

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

Response: Black's Law Dictionary defines "originalism" as a "doctrine that words of a legal instrument are to be given the meanings they had when they were adopted." Black's Law Dictionary (11th ed. 2019). If confirmed, I would apply the relevant precedent of Supreme Court and First Circuit, regardless of the interpretive methodology those precedents would employ.

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

Response: I understand that "living constitutionalism" has been characterized as a doctrine in which the Constitution can be interpreted and applied in accordance with changing circumstances and, in particular, with changes in social values. See Black's Law Dictionary (11th ed. 2019). If confirmed, I would be bound by the precedents of the Supreme Court and

the First Circuit, regardless of the interpretive methodology those precedents would employ.

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

Response: In interpreting the Constitution, courts are "guided by the principle that the Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary meaning as distinguished from technical meaning." *District of Columbia v. Heller*, 554 U.S. 570, 576 (2008) (quotation marks and citations omitted). And where "the constitution text does not alone resolve" a question of interpretation, the Supreme Court "has turn[ed] to the historical background of [the text] to understand its meaning." *Crawford v. Washington*, 541 U.S. 36, 43-44 (2004). If confirmed, I would be bound by Supreme Court and First Circuit precedents regarding how to interpret the relevant constitutional provision, including the interpretive methods they may have employed in interpreting that provision.

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

Response: If confirmed, I will follow Supreme Court and First Circuit precedent regarding interpretive methods. The Supreme Court has indicated that the plain or "ordinary" meaning refers to the public understanding of the text at the time of its enactment. *See, e.g., Bostock v. Clayton County*, 140 S. Ct. 1731, 1738 (2020).

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

Response: The Constitution is an enduring document that sets forth the principles that govern our nation. The Constitution does not change unless amended pursuant to the procedures set forth in Article V.

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

Response: Yes.

a. **Was it correctly decided?**

Response. As a nominee, it would be inappropriate for me to opine on whether a Supreme Court decision was "correctly decided." If confirmed, I will follow all binding Supreme Court precedents.

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

Response: Yes.

a. **Was it correctly decided?**

Response. As a nominee, it would be inappropriate for me to opine on whether a Supreme Court decision was "correctly decided." If confirmed, I will follow all binding Supreme Court precedents.

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

Response: Yes.

a. **Was it correctly decided?**

Response. As a nominee, it would be generally inappropriate for me to opine on whether a Supreme Court decision was "correctly decided." If confirmed, I will follow all binding Supreme Court precedents. There are, however, some holdings that are unlikely to be challenged in future litigation. I believe that *Brown v. Board of Education* is such a case, and therefore I can state that it was correctly decided.

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

Response: Under 18 U.S.C. § 3142(e)(2) "a rebuttable presumption arises that no condition or combination of conditions will reasonably assure the safety of any other person and the community" when (1) a defendant has been convicted of certain specified offenses (such as certain crimes of violence that carry a maximum term of imprisonment of ten years, offenses for which life imprisonment or death is the maximum sentence, certain drug offenses that carry a maximum term of imprisonment of 10 years, certain felonies involving minors or firearms, and other enumerated offenses); (2) the offense was committed while the person was on release pending trial; and (3) a period of not more than five years has elapsed since the date of conviction, or the release of the person from imprisonment, for the offense described. Under 18 U.S.C. § 3142(e)(3), "[s]ubject to rebuttal by the person, it shall be presumed that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community if the judicial officer finds that there is probable cause to believe that the person committed" certain drug offenses carrying a maximum term of imprisonment of ten years or more, certain offenses involving firearms, certain offenses involving minor victims, and other enumerated offenses.

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

Response: I'm not aware of Supreme Court or First Circuit precedent discussing the policy rationales underlying the presumption.

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

Response: Yes. In *Burwell v. Hobby Lobby Stores, Inc.,* 573 U.S. 682 (2014), the Supreme Court held that the Religious Freedom Restoration Act of 1993 (RFRA) covers both religious organizations and small businesses operated by observant owners. Under RFRA, if any federal law places a substantial burden on a person's exercise of religion, the

government must show the burden "(1) is in furtherance of a compelling government interest; and (2) is the least restrictive means of furthering that compelling governmental interest. *Burwell,* 573 U.S. at 695 (citing 42 U.S.C. § 2000bb-1). When RFRA does not apply, the Supreme Court has held that "laws incidentally burdening religion are ordinarily not subject to strict scrutiny under the Free Exercise Clause so long as they are neutral and generally applicable." *Fulton v. City of Philadelphia,* 141 S. Ct. 1868, 1876 (2021) (citations omitted). A law is not neutral if "the object or purpose of the law is suppression of religion or religious conduct," *Church of the Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 531-32 (1993), or if the record shows that the government seeks to "impose regulations that are hostile to the religious beliefs of affected citizens" or "act[s] in a manner that passes judgment upon or presupposes the illegitimacy of religious beliefs or practices," *Masterpiece Cakeshop, Ltd. v. Colo. C.R. Comm'n*, 138 S. Ct. 1719, 1731 (2018) (citations omitted). A law is not generally applicable if it is subject to discretionary individualized exemptions, *Fulton*, 141 S. Ct. at 1878, or if the law treats any "comparable secular activity more favorably than religious exercise," *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021). If the law is neutral and generally applicable, rational basis review applies. If the law is not neutral and generally applicable, strict scrutiny applies.

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

Response: See my response to Question 13.

15. **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 held that the applicants clearly established their entitlement to the preliminary injunctive relief sought. The Supreme Court analyzed the requirements for a preliminary injunction and held that (1) the religious organizations "made a strong showing that the challenged restrictions violate 'the minimum requirement of neutrality' to religion"; (2) the religious organizations demonstrated that they would suffer irreparable harm if the restrictions were enforced because "'[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitute irreparable injury''; and (3) it had "not been shown that granting the applications [would] harm the public." *Roman Cath. Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 67-68 (2020) (internal citations omitted).

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

Response: In *Tandon v. Newsom*, 141 S. Ct. 1294 (2021), the Supreme Court held 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." *Id.* at 1296. The Court explained that "[i]t is no answer that a State treats some comparable secular businesses or other activities as poorly as or even less favorably than the religious exercise at issue." *Id*. For where a regulation treats comparable religious and secular activities differently, the regulation

survives strict scrutiny only if the government "show[s] that the religions exercise at issue is more dangerous than [secular] activities even when the same precautions are applied." *Id.* at 1297. "The State cannot 'assume the worst when people go to worship but assume the best when people go to work.'" *Id*. (quoting *Roberts v. Neace*, 958 F.3d 409, 414 (6th Cir. 2020)).

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

Response: Yes.

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

Response: In *Masterpiece Cakeshop Ltd. v. Colorado Civil Rights Comm'n*, 138 S. Ct. 1719 (2018), the Supreme Court held that the government application of a facially neutral public accommodations law violates the Free Exercise Clause where the record indicates that the government officials demonstrated animus toward a citizen's religious beliefs in that application. In *Masterpiece Cakeshop*, the court found that the evidentiary record supported a conclusion that the state civil rights commissioners had openly expressed hostility toward the petitioner's religious beliefs in the issuance of a cease-and-desist order, which the Court found sufficient to show animus in violation of the Free Exercise Clause under the foregoing test. *Id*. at 1729-31.

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

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

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

Response: includes subparts (a) and (b): The Supreme Court has held that an individual's religious beliefs are protected even if the beliefs are not consistent with those of a faith tradition. *Frazee v. Ill. Dep't of Emp.Sec.,* 489 U.S. 829, 834 (1989). "[C]ourts must not presume to determine the place of a particular belief in a religion or the plausibility of a religious claim." *Emp. Div. Dept. of Hum. Res. of Ore. v. Smith,* 494 U.S. 872, 887 (1990) (citations omitted).

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

Response: As a judicial nominee, it would be inappropriate for me to comment on the official position of a religion.

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

Response: In *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049, 2060 (2020), the Supreme Court held that the ministerial exception barred the plaintiff's employment discrimination claims brought under the Age Discrimination in Employment Act (ADEA) and the Americans with Disabilities Act (ADA). The Court explained that while religious organizations are normally not exempt from the requirements of generally applicable anti-discriminations, the ministerial exception – which is grounded in the First Amendment's Religion Clauses – provides that "Courts are bound to stay out of employment disputes involving those holding certain important positions with churches and other religious institutions." *Id*. at 2060. In *Morrissey-Berru*, the court concluded that the evidence in the record regarding the duties of the teacher-plaintiffs, "who were entrusted most directly with the responsibility of educating their students in the faith," entitled their employers to claim the ministerial exception. *Id.* at 1267.

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

Response: In *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1878-81 (2021), the Supreme Court invalidated a portion of the City of Philadelphia's foster care contract which required an agency to provide services to prospective foster parents without regard to their sexual orientation. The Court found that the contract was "not generally applicable as required by *[Employment Division v*.] *Smith*", and thus, strict scrutiny applied. The Court then concluded that the provision at issue "incorporates a system of individual exemptions" and that the inclusion of such "a formal mechanism for granting exceptions renders a policy not generally applicable." *Id.* at 1878-79; see also *Id*. at 1877 (government may not prohibit[] religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way.) Applying strict scrutiny, the court concluded that "the interest of the city in the equal treatment of prospective foster parents and foster children…cannot justify denying [plaintiff] an exception for its religious exercise" under the Free Exercise Clause. *Id*.

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

Response: In *Carson v. Makin*, 142 S. Ct. 1987 (2022), the Supreme Court held that a Maine public-benefits program that provided tuition assistance for private schools violated the Free Exercise Clause because it barred religious schools from receiving tuition assistance solely because they are religious. This holding is consistent with *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017) and *Espinoza v. Montana Department of Revenue*, 140 S. Ct. 2246 (2020).

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

Response: In *Kennedy v. Bremerton School District*, 142 S. Ct. 2407 (2022), the Supreme court held that a school district violated the Free Speech and Free Exercise Clause of the

First Amendment when it fired a high school football coach for praying quietly and privately midfield after football games. First, the Supreme Court held that the coach's speech was not government speech. Instead, it was private expression protected by the First Amendment because the prayers were not "within the scope" of his duties as a coach. *Id*. at 2424. Second, regarding the Free Exercise Clause, the Court explained that the district admitted it was motivated at least in part because of the "religious character" of the coach's actions. *Id*. at 2422. As a result, the Court applied heightened scrutiny to the school district's actions. *Id*. at 2426. The Court rejected the school district's explanation of trying to avoid a violation of the Establishment Clause. The Court held that the district had not shown that allowing the coach to pray would have coerc[ed] students to pray and that the district's other arguments were based on a misunderstanding of the Establishment Clause. *Id.* at 2428-29.

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

Response: In *Mast v. Fillmore County*, 141 S. Ct. 2430 (2021), Justice Gorsuch joined the full Court in granting the application for a writ of certiorari filed by members of an Amish community, who had challenged a county ordinance that required they install a modern subsurface septic system for the disposal of gray water as a violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA); in vacating the judgment below; and in remanding to the Court of Appeals of Minnesota for reconsideration in light of *Fulton v. Philadelphia*, 141 S. Ct. 1868 (2021). Justice Gorsuch's concurring opinion proceeded to detail the Justice's view that the state court had erred in its application of RLUIPA, including in how the state court had analyzed the "compelling interest" test on the facts presented and failing to give due weight to evidence presented by the applicants in support of their RLUIPA claims. See id., 141 S. Ct. at 2432-33 (Gorsuch, J., concurring).

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

Response: As a judicial nominee, it would be inappropriate and a potential ethical violation to comment on any matter that might become an issue in litigation before any of the federal courts.

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

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

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

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

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

Response includes subparts (a), (b), (c), and (d): None of the suggested subjects would be appropriate for training.

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

Response: Yes.

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

Response: Yes.

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

Response: As a judicial nominee, it would be inappropriate for me to comment on actions taken by another branch of government. If I am confirmed, I would address any legal claim before me solely based on the facts and the prevailing Supreme Court or First Circuit precedent.

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

Response: Policy makers are responsible for determining if there are unwarranted system-wide disparities of treatment on any grounds. As a sitting judge, I have attempted to treat all individuals coming before the court fairly. If confirmed, I would endeavor to continue to address each case fairly, and without improper influences.

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

Response: The size of the Supreme Court is a question the Constitution leaves to Congress. I am bound to apply Supreme Court precedent regardless of its composition.

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

Response: No.

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

Response: In *New York Rifle Association v. Bruen*, 142 S. Ct. 2111 (2022), the Supreme Court stated that, based on its interpretation of the Second Amendment's text and original public meaning, the Amendment protects "the right of an ordinary, law-abiding citizen to

possess a handgun in the home for self-defense" and "to carry a handgun for self-defense outside the home." *Id*. at 2122

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

Response: In *New York Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111 (2022), the Supreme Court held that "when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.'" *Id*. at 2126 (citations omitted).

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

Response: The Supreme Court held in *District of Columbia v. Heller*, 554 U.S. 570 (2008), that the Constitution protects an individual right to keep and bear arms. In *McDonald v. City of Chicago*, 561 U.S. 742 (2010), the Supreme Court held that the right is fundamental and applied to the states through the Fourteenth Amendment. *Id*. at 626.

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

Response: I am not aware of any Supreme Court or First Circuit precedent that the right to own a firearm receives less protection than other rights. Also see my response to Question 35.

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

Response: Please see my response to Question 35.

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

Response: Under Article II, Section 3 of the United States Constitution, the President "shall take Care that the Laws be faithfully executed." In *United States v. Nixon*, 418 U.S. 683 (1974), the Supreme Court found that the "Executive Branch has exclusive authority and absolute discretion to decide whether to prosecute a case." *Id*. at 693.

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

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

(11th ed. 2019). Administrative rule changes are subject to the Administrative Procedure Act.

40. **Does the President have the authority to aboli.sh the death penalty?**

Response: Criminal penalties, including the death penalty, are determined by state and federal policy makers. The President does not have the authority to legislate.

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

Response: In *Alabama Association of Realtors v. HHS*, 141 S. Ct. 2485 (2021), the Supreme Court found that the plaintiffs were likely to prevail on their claim that the Centers for Disease Control did not have the authority to enact its nationwide moratorium on evictions. The Court further found that the equities weighed in favor of vacating the stay,

42. **The *Patriot Ledge*r reported that between 2008 and 2011 you acquitted 100% of every Operating Under The Influence case before you. The Plymouth County District Attorney addressed the troubling report, noting that report does not explain why some judges have such off-the-chart numbers. Can you explain your 100% acquittal rate?**

Response: At the time that the article was published, serious issues were raised as to the accuracy of the reported statistics. I registered my strong objections to my superiors, as I believed it mischaracterized my record.

During my entire 13 years as a state court judge, I have taken seriously my responsibility to be fair and impartial to all parties and in every case. I take great care to recuse myself from any case that would present even the appearance of a conflict. In every bench trial I presided over, I assessed the evidence, applied the law and the burden of proof, and issued a verdict that I believed to be supported by the credible evidence. I have convicted and acquitted defendants of criminal charges, including charges of operating under the influence, during my 13 years on the bench.

43. **In 2000, you went on a 21-day trek to publicize your belief that "people are being thrown into prison for economic reasons." Do you believe courts lock criminals up purely on the basis of their socio-economic status?**

Response: I do not recognize that quote. In the 13 years I have served as a state court judge, I have watched my judicial colleagues uphold their oaths to deliver equal justice under law every day, and I have worked to do the same.

Senator Ben Sasse
Questions for the Record for Margaret R. Guzman
U.S. Senate Committee on the Judiciary
Hearing: "Nominations"
September 21, 2022

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

   Response: No.

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

   Response: During my 13 years as a judge, I have approached each case with an open mind, providing an opportunity for all parties to be heard, and putting aside any personal beliefs. As a state court judge, I rely on my own legal research and writing, which allows me to keep current on developments in the law. I work hard to deliver rulings in a timely manner, and to ensure that they are readable and understandable to all parties, whether they are legally trained or not, so that my legal reasoning is clear. If confirmed, I will continue to bring that work ethos and faithfully apply the law as dictated by the Supreme Court and First Circuit precedents.

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

   Response: Black's Law Dictionary defines "originalism" as a "doctrine that words of a legal instrument are to be given the meanings they had when they were adopted." Black's Law Dictionary (11th ed. 2019). If confirmed, I would apply the relevant precedent of Supreme Court and First Circuit, regardless of the interpretive methodology those precedents would employ.

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

   Response: While I have not ever characterized myself as a textualist, I am aware that the Supreme Court's admonition that the courts should "normally interpret[] a statute in accord with the ordinary public meaning of its terms at the time of the enactment," and "are not free to overlook plain statutory commands on the strength of nothing more than suppositions about intentions or guesswork about expectations." *Bostock v. Clayton County*, 140 S. Ct. 1731, 1738, 1754 (2020). If confirmed, I would faithfully follow all Supreme Court precedent regarding the methodology courts should follow when interpreting the meaning of a constitutional or statutory text, including, but not limited to *Bostock*.

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

Response: The Constitution is an enduring document that sets forth the fundamental rights enjoyed by all Americans and the core principles that govern our nation. In *McCullough v. Maryland*, 17 U.S. 316, 415 (1819), the Supreme Court observed that the Constitution is "intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs." However, the Constitution itself does not change, unless amended pursuant to Article V.

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

Response: I have great respect and admiration for the many able Justices who have served on the Supreme Court. As a judicial nominee, it would be inappropriate for me to single out any particular one as more admirable than others. However, if confirmed, I hope to exhibit the many admirable qualities that they have displayed, including an open-minded but rigorous approach to the law, fidelity to precedent, careful attention to detail and judicial temperament.

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

Response: In the First Circuit, precedential decisions of a panel are binding on later panels. See *United States v. Santiago-Colon*, 917 F.3d 43, 57 (1st Cir. 2019) (determining that the law of the circuit, a branch of *stare decisis*, holds that "newly constituted panels in a multi-panel circuit are bound by prior panel decisions that are closely on point."). Where there is no controlling Supreme Court precedent, the exceptions to the rule of *stare decisis* are extremely limited. *Id*. at 57-58. Exceptions come into play only if the holding of a prior panel is contradicted by subsequent authority in an *en banc* decision, subsequent decisions of the Supreme Court, or a legislative overruling, or "in those rare instances in which authority that postdates the original decision, although not directly controlling, nevertheless offers a sound reason for believing that the former panel, in light of fresh developments, would change its collective mind." *Id.*

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

Response: See my response to Question 7.

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

Response: If confirmed, I would consult and follow Supreme Court and First Circuit precedent interpreting the relevant text. If there is no binding precedent, I would first look to the text and interpret the text according to its plain and ordinary meaning. If there is an ambiguity in the text, I would then look to any relevant canons of statutory construction, and Supreme Court or First Circuit precedent interpreting analogous statutory provisions, and potentially consider persuasive authority from other circuit courts. If necessary, I would consult legislative history to the extent permitted by Supreme Court and First Circuit precedent. "General principles" of justice are not an accepted method of statutory interpretation.

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

Response: The factors a judge may consider when fashioning a sentence are set out in 18 U.S.C. § 3553(a). The United States Sentencing Guidelines Manual states that race, sex, national origin, creed, religion, and socio-economic status are not relevant in determining a sentence. U.S.S.G. § 5H1.10.

Senator Josh Hawley
Questions for the Record

Margaret Guzman
Nominee, District of Massachusetts

1. **A newspaper report in 2012 stated that "there is a disturbingly high rate of not-guilty verdicts when drunken drivers elect to have a bench trial before certain judges." The report singled you out as especially noteworthy. It remarked that you acquitted 100% of the 149 DUI defendants who sought a bench trial before you. It then cited a report that recommended "that the judiciary discourage 'judge shopping.'"**

    a. **How is it that every single defendant at the time of that report who had elected a bench trial before you received an acquittal from you?**

    Response: At the time that the article was published, serious issues were raised as to the accuracy of the reported statistics. I registered my strong objections to my superiors, as I believed it mischaracterized my record.

    During my entire 13 years as a state court judge, I have taken seriously my responsibility to be fair and impartial to all parties and in every case. I take great care to recuse myself from any case that would present even the appearance of a conflict. In every bench trial I presided over, I assessed the evidence, applied the law and the burden of proof, and issued a verdict that I believed to be supported by the credible evidence. I have convicted and acquitted defendants of criminal charges, including charges of operating under the influence, during my 13 years on the bench.

    b. **Do you believe drunk driving is a serious crime?**

    Response: Yes. Based on my experience in the criminal courts for more than 30 years, I am aware of the many tragedies that were the direct result of improper motor vehicle operation, including by impaired drivers. As a state court judge who must apply Massachusetts state law, I would note that most impaired driving charges in Massachusetts are classified as misdemeanors. Despite the classification, these types of criminal offenses are still serious offenses which represent a real danger to the public. During my entire 13 years as a state district court judge, I have taken seriously my responsibility to be fair and impartial to all parties and in every case.

2. **Then-Judge Ketanji Brown Jackson made a practice of refusing to apply several enhancements in the Sentencing Guidelines when sentencing child pornography offenders. Please explain whether you agree with each of the following Guidelines enhancements and whether, if you are confirmed, you intend to use them to increase the sentences imposed on child pornography offenders.**

    a. **The enhancement for material that involves a prepubescent minor or a minor who had not attained the age of 12 years**

    b. **The enhancement for material that portrays sadistic or masochistic conduct or other depictions of violence**

    c. **The enhancement for offenses involving the use of a computer**

    d. **The enhancements for the number of images involved**

    Response includes subparts (a), (b), (c), and (d): A federal judge's sentencing decisions are governed by 18 U.S.C. § 3553(a). Through § 3553(a), Congress has directed courts to "impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth" in the statute, and further directs the courts "shall consider" each of the specifically enumerated factors listed therein. Congress provided guidance to assist federal judges in their quest to sentence with considerations of the individual, and the need for the sentence imposed "(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (B) to afford adequate deterrence to criminal conduct; and (C) to protect the public from further crimes of the defendant." See 18 U.S.C. § 3553 (a)(2)C). For instance, one of the factors district courts must consider in each case is "the kinds of sentence and the sentencing range" recommended in the guidelines, as applicable to the individual defendant and the offense(s) in question. See 18 U.S.C. § 3553(a)(4). If confirmed, I will carefully consider the Guidelines-recommended sentence and sentencing range in each case, the recommendations by the government, probation and the defendant, and depart from the Guidelines only where authorized and appropriate under the totality of the analysis required by 18 U.S.C. § 3553(a).

3. **Federal law currently has a higher penalty for distribution or receipt of child pornography than for possession. It's 5-20 years for receipt or distribution. It's 0-10 years for possession. The Commission has recommended that Congress align those penalties, and I have a bill to do so.**

    a. **Do you agree that the penalties should be aligned?**

b. If so, do you think the penalty for possession should be increased, receipt and distribution decreased, or a mix?

c. If an offender before you is charged only with possession even though uncontested evidence shows the offender also committed the crime of receiving child pornography, will you aim to sentence the offender to between 5 and 10 years?

Response includes subparts (a), (b), and (c): Decisions on the appropriate changes or amendment to sentencing authority for criminal cases are to be made by policy makers, and are not within the purview of federal judges. A federal judge's sentencing decisions are governed by 18 U.S.C. § 3553(a). If confirmed, I will consider the Guidelines-recommended sentence and sentencing range in each case and depart from the Guidelines only where authorized and appropriate under the totality of the analysis required by 18 U.S.C. § 3553(a).

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

a. Do you agree with that philosophy?

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

Response includes subpart (a) and (b): I am not familiar with that quotation, but I believe that a judge's personal opinion should have no role in decision-making. If confirmed, I would fairly and faithfully apply the law to the facts of each particular case and abide by the dictates of the judicial oath which is codified in 28 U.S.C. § 453.

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

Response: Yes.

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

Response: The standards for the most common bases for abstention in the First Circuit are described below:

Younger abstention doctrine requires federal courts to abstain from hearing cases that are already pending in state proceedings. *Younger v. Harris*, 401 U.S. 37 (1971). *Younger* involved a pending state criminal prosecution but the Supreme Court later extended the doctrine to some state civil proceedings. *Huffman v. Purdue*, Ltd., 420 U.S. 592, 607 (1975). In the First Circuit, the *Younger* abstention doctrine applies "when the requested relief would interfere (1) with an ongoing state judicial proceeding; (2) that implicates an important state interest; and (3) that provides an adequate opportunity for the federal plaintiff to advance his federal constitutional challenge." *Rossi v. Gemma*, 489 F.3d 26, 34-35 (1st Cir. 2007).

Under *Pullman* abstention, first established in *Railroad Commission of Texas v. Pullman Co*., 312 U.S. 496 (1941), federal courts should abstain from a decision when "difficult and unsettled questions of state law must be resolved before a substantial federal constitutional question can be decided." *Haw. Housing Auth. v. Midkiff*, 467 U.S. 229, 236 (1984). The First Circuit considers two factors in determining whether *Pullman* abstention is appropriate: (1) whether there is substantial uncertainty over the meaning of the state law at issue; and (2) whether a state court's clarification of the law would obviate the need for a federal constitutional ruling. *Ford Motor Co. v. Meredith Motor Co*., 257 F.3d 67, 71 (1st Cir. 2001).

Under *Buford* abstention, first formulated in *Buford v. Sun Oil Co*., 319 U.S. 315 (1943), federal courts will abstain from cases in which federal adjudication could interfere with a complex state administrative scheme. The First Circuit found that *Buford* abstention applies narrowly and "rest[s] upon…the threat…that a federal court might, in the context of the state regulatory scheme, create a parallel, additional, federal 'regulatory review' mechanism, the existence of which would significantly increase the difficulty of administering the state regulatory scheme." *Forty Six Hundred LLC v. Cadence Educ., LLC*, 15 F.4th 70, 75 (1st Cir. 2021) (quoting *Bath Mem'l Hosp. v. Maine Health Care Fin. Comm'n*, 853 F.2d 1007, 1013 (1st Cir. 1988)). Thus, *Buford* abstention applies only in "unusual circumstances, where the federal court risks usurping the state's role as the regulatory decision-making center." *Forty Six Hundred LLC*, 15 F.4th at 75 (internal quotations omitted).

Rooker-Feldman doctrine prevents "lower federal courts…from exercising appellate jurisdiction over final state-court judgments." *Lance v. Dennis*, 546 U.S. 459, 463 (2006). This is because 28 U.S.C. § 1257 vests sole jurisdiction over appeals from final state-court judgments in the Supreme Court. *Id*. The First Circuit applies the *Rooker-Feldman* abstention doctrine where "the losing party in state court filed suit in federal court after the state proceedings ended, complaining of an injury caused by

the state-court judgment and seeking review and rejection of that judgment." *Federation de Maestros v. Junta de Relaciones del Trabajo*, 410 F.3d. 17, 23-24 (1st Circ. 2005) (quoting *Exxon Mobil Corp. v. Saudi Basic Induc. Corp*., 544 U.S. 280, 291 (2005)).

Under the *Colorado River* abstention doctrine, federal courts may stay proceedings in cases involving concurrent state and federal suits addressing the same subject matter based on considerations of "wise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation." *Colorado River Water Conservation District v. United States*, 424 U.S. 800, 817 (1976). The First Circuit will consider its authority under an exceptional circumstances test balancing the non-exclusive list of factors drawn from *Colorado River* and its progeny: "(1) whether either court has assumed jurisdiction over a res; (2) the [geographical] inconvenience of the federal forum; (3) the desirability of avoiding piecemeal litigation; (4) the order in which the forums obtained jurisdiction; (5) whether state or federal law controls; (6) the adequacy of the state forum to protect the parties' interests; (7) the vexatious or contrived nature of the federal claim; and (8) respect for the principles underlying removal jurisdiction." *Jimenez v. Rodriguez-Pagan*, 597 F.3d 18, 27-28 (1st Cir. 2010) (internal quotations omitted).

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

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

        Response includes subpart (a): No.

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

    Response: The Supreme has looked to the original public meaning to interpret the Constitution in multiple cases. In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court looked to the original public meaning to interpret the Second Amendment and in *Crawford v. Washington*, 541 U.S. 36 (2004), the Supreme Court looked to the original meaning of the text of the confrontation clause in its decision. If confirmed, I will follow the Supreme Court and First Circuit precedent regarding interpretation of the Constitution.

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

Response: In *Exxon v. Mobil Corp. v. Allapattah Serv., Inc.,* 545 U.S. 546 (2005), the Supreme Court held that legislative history should only be considered if the statutory text is ambiguous. If there is ambiguity and there is no applicable Supreme Court or First Circuit precedent, I would also consult persuasive authority such as Supreme Court or First Circuit precedent on analogous statutes or similar language, other circuit precedent, relevant canons of interpretation, and legislative history.

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

Response: The Supreme Court recognized that some types of legislative history (e.g., committee reports) are more probative of legislative intent than others (e.g., comments made during debate). *See, e.g., NLRB v. SW Gen., Inc.,* 137 S. Ct. 929, 943 (2017); *Garcia v. United States*, 469 U.S. 70, 76 (1984).

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

Response: It is not appropriate to consult laws of foreign nations when interpreting the provisions of the U.S. Constitution.

10. 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: "A prisoner must show a feasible and readily implemented alternative method of execution that would significantly reduce a substantial risk of severe pain and the State has refused to adopt without a legitimate penological reason" in order to establish that an execution protocol violates the Eighth Amendment's prohibition on cruel and unusual punishment. *Bucklew v. Precythe*, 139 S. Ct. 1112, 1125 (2019).

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

Response: Yes.

12. 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: I am not aware of the recognition of such a right.

13. **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.

14. **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 held in *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, that laws which burden the free exercise of religion are subject to strict scrutiny when they are not facially neutral or generally applicable; such laws must be justified by a compelling governmental interest and narrowly tailored to advance that interest. 508 U.S. 520, 533 (1993). The Supreme Court found that a statute is not neutral and generally applicable if it treats comparable activity between secular and religious groups differently. *Tandon v. Newsom*, 141 S. Ct. 1294 (2021). Moreover, in *Fulton v. City of Philadelphia*, the Supreme Court found that a restriction that burdens religious liberty is not generally applicable if it allows for discretionary exemptions that may allow for different treatment between secular and religious groups. 141 S. Ct. 1868, 1882 (2021). And in *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, the Supreme Court held that the government's application of a facially neutral public accommodations law violated the Free Exercise Clause where a transcript of the commission meetings showed a religious animus against the cakeshop owner's religious beliefs. 138 S. Ct. 1719 (2018).

15. **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: See my response in Question 14.

16. 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: A court's inquiry is limited to whether the beliefs are sincerely held, not whether the beliefs are consistent with any particular religious faith or doctrine. *Frazee v. Ill. Dep't of Emp. Sec.*, 489 U.S. 829, 834 (1989). A sincerely held religious belief need not be based on a "tenet, belief or teaching of an established religious body" and but may instead be based on an individual's personal religious conviction. *Id.* at 831-33; *Burwell v. Hobby Lobby Stores, Inc*., 573 U.S. 682, 725 (2014).

17. 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 "guarantee[s] the individual right to possess and carry weapons in case of confrontation." 554 U.S. 570, 592 (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.

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

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

Response: In *Lochner v. New York*, 198 U.S. 45 (1905) (Holmes, J., dissenting), Justice Holmes also observed, "a Constitution is not intended to embody a particular economic theory." *Id*. at 75. It would be inappropriate for me to comment on either aspect of his opinion. If confirmed, I would faithfully uphold my oath to resolve each case neutrally and impartially.

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

Response: The Supreme Court's holding in *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937), is recognized as having abrogated *Lochner*. If confirmed, I will follow all binding Supreme Court and First Circuit precedents.

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

a. If so, what are they?

Response: I am not aware of any such opinions.

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

Response: Yes.

20. 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 have no view on the opinion expressed by Judge Learned Hand. If confirmed, I will follow all Supreme Court and First Circuit precedents about what constitutes a monopoly.

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

Response: I have no view on the opinion expressed by Judge Learned Hand. If confirmed, I will follow all Supreme Court and First Circuit precedents about what constitutes a monopoly.

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

Response: In *Eastman Kodak Co. v. Image Tech Servs., Inc*., the Supreme Court found that evidence that a party holds more than 80% share of the

product market, "with no readily available alternatives," was sufficient to support a finding of monopoly power. 504 U.S. 451, 481 (1992). The Court in *Eastman* also cited to two earlier cases where the Supreme Court held that companies holding 87% of the market and more than two-thirds of the market constituted monopolies. *Id*. (citing *United States v. Grinnell Corp*., 384 U.S. 563, 571 (1966); *American Tobacco Co. v. United States*, 328 U.S. 781, 797 (1946)).

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

Response: In *Erie R. Co. v. Tompkins,* 304 U.S. 64, 78 (1938), the Supreme Court found that "[t]here is no federal general common law."

22. 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: Federal courts must interpret state constitutional provisions in accordance with state law. *Erie R. Co. v. Tompkins,* 304 U.S. 64, 77-79 (1938).

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

Response: See my response to Question 22.

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

Response: State constitutional provisions may provide greater protections than those provided for in the federal Constitution.

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

Response: As a sitting judge and a judicial nominee to the United States District Court, District of Massachusetts it would be inappropriate for me to comment on whether this precedent was correctly decided. If confirmed, I will faithfully apply Supreme Court and First Circuit precedent.

There are, however, some holdings that are unlikely to be challenged in future litigation. I believe that *Brown v. Board of Education* is such a case, and that it was correctly decided.

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

Response: Federal Rule of Civil Procedure 65 governs the procedures for issuing injunctions. The Supreme Court found that an "injunction is a drastic and extraordinary remedy, which should not be granted as a matter of course." *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165 (2010). A nationwide injunction must not be more burdensome to the defendant than is necessary to provide complete relief to the plaintiffs. *Califano v. Yamasaki,* 442 U.S. 682, 702 (1979) (injunctive relief was permitted in case where nationwide class certified).

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

Response: See my response to Question 24.

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

Response: There is an ongoing debate about the power of the federal judiciary to issue nationwide injunctions. If confirmed, I will follow all Supreme Court and First Circuit precedents relating to injunctions.

25. 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: See my response to Question 24, and Question 24 subpart (b).

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

Response: "Federalism secures the freedom of the individual." *Bond v. United States*, 564 U.S. 211, 221 (2011). "[F]reedom is enhanced by the creation of two governments, not one." *Alden v. Maine*, 527 U.S. 706, 758 (1999). "When Congress legislates in matters affecting the States, it may not treat those sovereign entities as mere prefectures or corporations. Congress must accord States the esteem due them as joint participants in a federal system, one beginning with the premise of sovereignty in both the central Government and the separate States. Congress has ample means to ensure compliance with valid federal laws, but it must respect the sovereignty of the States." *Id.*

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

Response: See my response to Question 6.

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

Response: Generally, damages might be sought to address past harms while injunctive relief might be sought to address or prevent a future harm. *TransUnion LLC v. Ramirez,* 141 S. Ct. 2190, (2021). However, injunctive relief is an "extraordinary remedy, never awarded as of right." *Winter v. Nat. Res. Defense Council, Inc*., 555 U.S. 7, 24 (2008).

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

Response: In *Glucksburg*, the Supreme Court described the rights it had identified as protected by substantive due process: as follows: "In a long line of cases, we have held that, in addition to the specific freedoms protected by the Bill of Rights, the 'liberty' specially protected by the Due Process Clause includes the rights to marry, *Loving v. Virginia*, 388 U.S. 1 (1967); to have children, *Skinner v. Oklahoma ex rel Williamson*, 316 U.S. 535 (1942); to direct the education and upbringing of one's children, *Meyer v. Nebraska*, 262 U.S. 390 (1923); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); to marital privacy, *Griswold v. Connecticut*, 381 U.S. 479 (1965); to use contraception, ibid.; *Eisenstadt v. Baird*, 405 U.S. 438 (1972); to bodily integrity, *Rochan v. California*, 342 U.S. 165 (1952), and to abortion, *Casey supra*. We have also assumed, and strongly suggested, that the Due Process Clause protects the traditional right to refuse unwanted lifesaving medical treatment. *Cruzan*, 497 U.S., at 278-79." *Washington v. Glucksburg*, 521 U.S. 702, 720 (1997). In *Dobbs v. Jackson Women's Health Organization*, 597 U.S. ___ (2022), the Supreme Court overturned *Roe* v. Wade, 410 U.S. 113 (1973), and *Planned Parenthood of Southeastern PA v. Casey,* 505 U.S. 833 (1992), giving states the full power to regulate any aspect of abortion not preempted by federal law.

30. 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: The Free Exercise Clause of the First Amendment is one of the fundamental rights in the Constitution establishing an individual's right to practice religion. See *Cantwell v. Connecticut*, 310 U.S. 296 (1940).

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 said that the "exercise of religion" often involves not only belief and profession but the performance of (or abstention from) physical acts: assembling with others for a worship service, participating in sacramental use of bread and wine, proselytizing, abstaining from certain food or certain modes of transportation. *Emp. Div. Dep't. Hum. Res. of Oregon v. Smith,* 494 U.S. 871, 877 (1990).

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 Religious Freedom Restoration Act, which generally applies to actions by the federal government, requires that the government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability unless the government "demonstrates that application of the burden to the person (1) is in furtherance of a compelling government interest; and (2) is the least restrictive means of furthering that compelling government interest." 42 U.S.C. § 2000bb-1. In *Burwell v. Hobby Lobby Stores, Inc.*, the Supreme Court looked to two factors to find that the plaintiffs' religious exercise was substantially burdened: (1) non-compliance with the contraceptive mandate would cause severe economic consequences for the plaintiff and (2) compliance with the mandate would require the plaintiffs to violate their sincerely held religious beliefs. 573 U.S. 682, 720, 723 (2014).

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: See my response to Question 16.

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: With respect to actions by the federal government which are subject to the Religious Freedom Restoration Act (RFRA), even actions that are neutral and generally applicable are subject to strict scrutiny if they substantially burden the free exercise of religion. The RFRA requires that the government shall not substantially burden a person's exercise of religion even

if the burden results from a rule of general applicability unless the government "demonstrates that application of the burden to the person – (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000bb-1. In *Burwell v. Hobby Lobby Stores, Inc*., the Supreme Court looked to two factors to find that the plaintiffs' religious exercise was substantially burdened: (1) non-compliance with the contraceptive mandate would cause severe economic consequences for the plaintiff and (2) compliance with the mandate would require the plaintiffs to violate their sincerely held religious beliefs. 573 U.S. 682, 720, 723 (2014). The Free Exercise Clause and the Establishment Clause prohibit government interference with religious institutions' employment of certain key employees such as ministers and teachers. *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049 (2020).

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

Response: No.

31. 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'm not familiar with that quote, but I understand it to indicate that a judge should put aside their personal beliefs and apply the facts to the law.

32. 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.

33. 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.

34. Do you believe America is a systemically racist country.

Response: No.

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

Response: In all my work as an advocate, I fulfilled my duty to zealously represented my client's best interests, without consideration to my own personal views.

36. How did you handle the situation?

Response: See answer Question 35.

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

Response: If confirmed, I will apply the law impartially and faithfully in all cases.

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

Response: My views of the law have been shaped by the accumulation of my life experiences, including my formal and continuing legal education, my years of legal practice as an advocate in the civil and criminal courts, and my 13 years as a judge in a court of general jurisdiction. If confirmed, I would apply the law to the facts of a particular case in a fair and impartial manner.

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

Response: As a judicial nominee, Canon 3(A)(6) of the Code of Conduct for United States Judges prohibits me from commenting on issues that are pending or may come before the court.

40. 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: In *Commonwealth v. Medina*, 64 Mass. App. Ct. 708 (2005), I provided testimony in the Worcester Superior Court on a former client's claim of ineffective assistance of counsel, in a Motion for New Trial. The trial court denied the motion.

The Massachusetts Court of Appeals upheld the conviction and the denial of the Motion for New Trial.

In *Commonwealth v. Spray*, 467 Mass. 456 (5 NE3d 891) (2014), I provided testimony in the Worcester Superior Court on a former client's claim of ineffective assistance of counsel, in a Motion for New Trial. The trial court denied the motion. The Massachusetts Supreme Judicial Court upheld the conviction and the denial of the Motion for New Trial.

In *Commonwealth v. Leo*, 0285CR0830, Worcester County Superior Court, I provided testimony in the Worcester Superior Court on a former client's claim of ineffective assistance of counsel, in a Motion to Withdraw Guilty Plea, and Motion for New Trial. The trial court denied the motions.

In *Commonwealth v. Trapasso*, Suffolk Superior Court, October 2008, I testified as a fact witness in a trial. The defendant was indicted on charges of extortion, bribery and larceny, involving one of my former clients. My testimony was limited to having received an unsolicited phone call from the defendant regarding my client. The defendant was convicted and sentenced after jury trial.

I do not have a transcript or other recording of my testimony.

41. 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.

42. 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.

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

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

Response: No.

44. Have you ever confessed error to a court?

a. If so, please describe the circumstances.

Response: No**.**

45. 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: Pursuant to my oath administered by the chair at the confirmation hearing held on September 21, 2022, I provided truthful answers to all questions put to me on that date and continue to do so in these inquiries.

Questions from Senator Thom Tillis
for Margaret Rose Guzman
Nominee to be United States District Judge for the District of Massachusetts

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: Judicial activism is defined as "[a] philosophy of decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions." Black's Law Dictionary, (11th ed. 2019). Judicial activism is not appropriate. If confirmed, I will decide any case based on the facts, arguments of counsel, and application of the law following Supreme Court and First Circuit precedent.

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

   Response: Impartiality is both mandated by an oath and it also compelled by a desire to be fair and issue rulings based only on the facts and the law.

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

   Response: No. The role of a judge is not to make policy or second-guess policy decisions made by elected representatives, but rather to decide each case on the evidence and faithfully applying the law.

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

   Response: The duty of a judge is to set aside any personal views and impartially apply the law to the facts established by the evidence, and then apply the law faithfully, without concern for the outcome.

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

   Response: No.

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

   Response: If confirmed, I will follow the judicial oath. I would endeavor to uphold the Constitution and the laws of the United States and follow all precedent of the Supreme

Court in cases regarding the Second Amendment such as *District of Columbia v. Heller*, 554 U.S. 570 (2008), *McDonald v. City of Chicago*, 561 U.S. 742 (2010), and *New York State Rifle and Pistol Association v. Bruen*, 142 S. Ct. 2111 (2022).

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

   Response: If confirmed, I would evaluate any legal case based on the facts of the case, the arguments of the parties, and application of the law to the facts. As to the proposed facts, as a nominee it would be inappropriate for me to comment on potential litigation.

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

   Response: If confirmed and faced with a claim of qualified immunity, I would review the facts of the case, the credible evidence, the arguments of the parties and apply the analysis as dictated by the Supreme Court. The two-part analysis requires assessing whether the facts taken in the light most favorable to the plaintiff show that there is a judicially created legal doctrine that "protects government officials from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *See Pearson v. Callahan*, 555 U.S. 223, 231 (2009). I would follow Supreme Court and First Circuit precedent regarding the application of qualified immunity.

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

    Response: See my answer to Question 9.

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

    Response: As a nominee, it would be inappropriate for me to comment on my personal belief about a legal doctrine. If confirmed, I would follow all Supreme Court and First Circuit precedents on any case involving a claim 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: During my 30 years of practice, I focused on criminal and civil matters in the state courts. While I have been involved in civil litigation, I have not had experience in cases involving patent jurisprudence. If confirmed, I would endeavor to familiarize myself with all legal issues raised by any matter related to patents, address each case fairly, and apply the Supreme Court and First Circuit precedent.

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 nominee, it would be inappropriate for me to comment on a set of facts in the hypothetical. If confirmed, I will fairly address any case and faithfully apply the Supreme Court and First Circuit 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 nominee, it would be inappropriate for me to comment on a set of facts in the hypothetical. If confirmed, I will fairly address any case and faithfully apply the Supreme Court and First Circuit 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 nominee, it would be inappropriate for me to comment on a set of facts in the hypothetical. If confirmed, I will fairly address any case and faithfully apply the Supreme Court and First Circuit 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 nominee, it would be inappropriate for me to comment on a set of facts in the hypothetical. If confirmed, I will fairly address any case and faithfully apply the Supreme Court and First Circuit 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 nominee, it would be inappropriate for me to comment on a set of facts in the hypothetical. If confirmed, I will fairly address any case and faithfully apply the Supreme Court and First Circuit 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 nominee, it would be inappropriate for me to comment on a set of facts in the hypothetical. If confirmed, I will fairly address any case and faithfully apply the Supreme Court and First Circuit 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 nominee, it would be inappropriate for me to comment on a set of facts in the hypothetical. If confirmed, I will fairly address any case and faithfully apply the Supreme Court and First Circuit 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 nominee, it would be inappropriate for me to comment on a set of facts in the hypothetical. If confirmed, I will fairly address any case and faithfully apply the Supreme Court and First Circuit 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 nominee, it would be inappropriate for me to comment on a set of facts in the hypothetical. If confirmed, I will fairly address any case and faithfully apply the Supreme Court and First Circuit 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 nominee, it would be inappropriate for me to comment on a set of facts in the hypothetical. If confirmed, I will fairly address any case and faithfully apply the Supreme Court and First Circuit 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 nominee, it would be inappropriate for me to comment on the present state of any area of jurisprudence. If confirmed, I will fairly address any case and faithfully apply the Supreme Court and First Circuit 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: During my 30 years of practice, I focused on criminal and civil matters in the state courts. While I have been involved in civil litigation, I have not had experience in cases involving patent jurisprudence. If confirmed, I would endeavor to familiarize myself with all legal issues raised by any matter related to copyright law, address each case fairly, and apply the Supreme Court and First Circuit precedent.

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

Response: See my response to Question 12. I have not had any experience with the Digital Millennium Copyright Act.

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

Response: See my response to Question 12.

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: During my 30 years of practice, I focused on criminal and civil matters in the state courts. While I have been involved in civil litigation including some cases that peripherally involved free speech issues, I have not had experience in cases involving copyright matters. If confirmed, I would endeavor to familiarize myself with all legal issues raised by any matter related to copyright, address each case fairly, and apply the Supreme Court and First Circuit precedent.

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: In dealing with a case which turned on the interpretation of a federal statute, I would first consult the text of the statute and any applicable Supreme Court and First Circuit precedent which interpreted the statute. If the meaning of the text is plain, the inquiry ends. If the language is ambiguous and there is no applicable Supreme Court or First Circuit precedent, I would also consult persuasive authority such as Supreme Court or First Circuit precedent on analogous statutes or similar language, other circuit precedents, relevant canons of interpretation, and legislative history.

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: If confirmed and confronted with a case which turned on whether or how to apply the "advice and analysis" of a federal agency, I would first review any applicable Supreme Court and First Circuit precedent relating to the "advice and analysis" of a federal agency or analogous agency advice. If there is no such precedent, I would look to the legal standards for judicial deference to an agency's "advice and analysis." *See Skidmore v. Swift & Co*., 323 U.S. 134 (1944); see also *Christensen v. Harris Cty*., 529 U.S. 576, 587 (2000); *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc*., 467 U.S. 837 (1984).

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 nominee, it would be inappropriate for me to offer an opinion or comment on facts or circumstances that might the subject of litigation. If confirmed, I would faithfully follow the precedent of the Supreme Court and the First Circuit.

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?

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 to subpart (a) and (b): If confirmed, I would faithfully and impartially apply any applicable Supreme Court and First Court precedent to the case before me. If there is no applicable precedent, I would interpret the statute by looking at the

plain text, including any relevant statutory definitions, and then consider applicable canons of construction or other interpretive principles. Where appropriate, I would also consider persuasive authority from other circuits, as well as legislative history.

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

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

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

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

d. If so, please explain your reasoning. If not, do you commit not to engage in such conduct?

Response to subparts (a), (b), (c), and (d): As a nominee, it would be inappropriate for me to comment on issues related to potential ethical issues for individual judicial officers or any other participant in the judicial system. However, it is my understanding that in the Federal District to which I am nominated, the case assignments are randomly conducted, reducing the concerns raised in the question and its subparts. If I am confirmed, I commit to not taking any steps that would call into question my independence and neutrality. I will endeavor to uphold the standard of ethical behavior expected from the judicial oath, treat each case fairly, and faithfully apply the law, and any Supreme Court and First Circuit precedents.

19. In just three years, the Court of Appeals for the Federal Circuit has granted no fewer than 19 mandamus petitions ordering a particular sitting district court judge to transfer cases to a different judicial district. The need for the Federal Circuit to intervene using this extraordinary remedy so many times in such a short period of time gives me grave concerns.

a. What should be done if a judge continues to flaunt binding case law despite numerous mandamus orders?

b. Do you believe that some corrective measure beyond intervention by an appellate court is appropriate in such a circumstance?

Response to subparts (a), and (b): See my answer in Question 18.

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

Response: As a nominee, it would be inappropriate for me to offer my opinion on this and other related issues. The issues raised by the question are important for the practical reasons, but also for the perception of fair administration of justice. As such these issues are best considered by policy makers or other administrative authorities.

a. If litigation does become concentrated in one district in this way, is it appropriate to inquire whether procedures or rules adopted in that district have biased the administration of justice and encouraged forum shopping?

Response: See my answer to Question 20.

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

Response: See my answer to Question 20.

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

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

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

Response to subparts (a) and (b): As a nominee, it would be inappropriate for me to comment on issues related to potential ethical issues for individual judicial officers or any other participant in the judicial system. If I am confirmed, I will endeavor to uphold the standard of ethical behavior expected from the judicial oath. I will treat each case fairly, and faithfully apply the law, and any Supreme Court and First Circuit precedents.